

Rocky Mountain Power
Exhibit RMP____(RAV-6SS)
Docket No. 17-035-40
Witness: Rick A. Vail

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF UTAH

ROCKY MOUNTAIN POWER

Exhibit Accompanying Second Supplemental Direct Testimony of Rick A. Vail

EPC and LSA Contract Forms

February 2018

TURNKEY CONTRACT
FOR

ENGINEERING, PROCUREMENT
AND CONSTRUCTION SERVICES

BETWEEN

[_____]

AEOLUS, ANTICLINE, JIM BRIDGER SUBSTATION PROJECTS

Dated as of

[_____]

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[To Be Updated]

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Both Parties have caused an individual with the requisite authority to acknowledge this and each page of this Contract prior to execution.

Contractor: Initial _____

Company: Initial _____

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THIS TURNKEY CONTRACT FOR ENGINEERING, PROCUREMENT AND CONSTRUCTION SERVICES (the "Contract") is made and entered into as of _____ [201_], (the "Effective Date") by and between, PacifiCorp, an Oregon Corporation ("Owner"), and _____, ("Contractor"). Each entity is sometimes individually referred to herein as a "Party" and both entities are sometimes collectively referred to herein as the "Parties."

RECITALS

A. Owner desires to engage Contractor to design, engineer, procure, construct, test and commission (as to testing and commissioning, only to the extent expressly provided in this Contract, including Exhibit "A") the Project all on a turnkey, guaranteed fixed price, guaranteed completion date basis, and Contractor desires to provide such services, all as further defined by the terms and conditions set forth in this Contract

B.

C. Contractor has:

- (1) been provided and reviewed the preliminary drawings and certain specifications for the Project and other documents relating to the Project which Contractor has deemed necessary in connection with this Contract;
- (2) inspected the real property on which the Project shall be constructed; and
- (3) performed or reviewed such other investigations, studies, and analyses which Contractor has determined to be necessary or prudent in connection with entering into this Contract.

D. Contractor agrees to guarantee the timely completion of the Project.

AGREEMENT

NOW, THEREFORE, in consideration of any sums to be paid to Contractor by Owner and of the covenants and agreements set forth herein, the Parties agree as follows:

1. DEFINITIONS

For purposes of this Contract, except as otherwise expressly provided or unless the context otherwise requires, the following terms shall have the following meanings. The meanings specified are applicable to both the singular and plural.

1.1. Affiliate. With respect to any Person, another Person that is controlled by, that controls or is under common control with, such Person; and, for this purpose, “control” with respect to any Person shall mean the ability to effectively control, directly or indirectly, the operations and business decisions of such Person whether by voting of securities or partnership interests or any other method.

1.2. Applicable Laws. The term means and includes all of the following:

- (a) any statute, law, rule, regulation, code, ordinance, judgment, decree, writ, order or the like, of any Governmental Authority, and the interpretations thereof, including any statute, law, rule, regulation, code, ordinance, judgment, decree, writ, order or the like, regulating, relating to or imposing liability or standards of conduct concerning:
 - (i) Owner, Contractor, the Site, the Contractor Yard Site or the performance of any portion of the Work or the Work taken as a whole, or the operation of the Project; or
 - (ii) safety and the prevention of injury to Persons and damage to property on, about or adjacent to the Site or any other location where any other portion of the Work shall be performed (including the Contractor Yard Sites) or
 - (iii) protection of human health or the environment or emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or wastes into the environment including ambient air, surface water, ground water, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, chemicals, Hazardous Materials or other industrial, toxic materials or wastes; as now or may at any time hereafter be in effect; and
- (b) Any requirements or conditions on or with respect to the issuance, maintenance or renewal of any Applicable Permit or any application therefor.

1.3. Applicable Permits. Each and every national, state and local license, authorization, certification, filing, recording, permit, waiver, exception, variance, franchise, order or other approval with or of any Governmental Authority, including each and every environmental, construction, operating or occupancy permit and any agreement, consent or approval that is required by any Applicable Laws.

1.4. BES Cyber System Information (BCSI) shall mean information concerning CIPS

Covered Assets that: (i) relates to the production, generation or transmission of energy; (ii) could be useful to a person planning an attack on critical infrastructure; and (iii) provides strategic information beyond the geographic location of the critical asset, and which is identified as BCSI by Owner. BCSI also includes any information concerning CIPS Covered Assets that has been identified by Owner as Critical Infrastructure Information (or CII).

1.5. Business Day. A Day, other than a Saturday or Sunday or holiday, on which banks are generally open for business in Salt Lake City, UT.

1.6. Cancellation Schedule. The cancellation payment schedule shall mean as set forth in Exhibit "D".

1.7. Change in Law. The enactment, adoption, promulgation, modification, or repeal after the Effective Date of any Applicable Law of any Governmental Authority of the United States or the modification after the Effective Date of any Applicable Permit issued or promulgated by any Governmental Authority of the United States (that could not be reasonably anticipated on the Effective Date) that establishes requirements that have a materially adverse effect on Contractor's costs or schedule for performing the Work; provided, however, neither (a) a change in any national, federal, or any other income tax law or any other law imposing a tax, duty, levy, impost, fee, royalty, or charge for which Contractor is responsible hereunder nor (b) a Change in Law that affects Contractor's or Subcontractor's costs of employment, shall constitute a Change in Law pursuant to this Contract. Section 4.15 sets out Contractor's rights in the event that an Owner Acquired Permit has not been issued or an application therefore has not been made on or prior to the Effective Date.

1.8. Change in Work. A change in the Work as defined in Section 17.1.

1.9. Change in Work Form. The form documenting a Change in Work as attached hereto as Exhibit "E".

1.10. CIPS Covered Assets. Any assets identified by Owner as "critical assets," "critical cyber assets," "BES assets," "BES cyber assets," or "BES cyber systems," as those terms are defined in the North American Electric Reliability Corporation (NERC) Glossary of Terms. "BES" refers to the "Bulk Electric System" as defined by NERC.

- 1.11. Company. The term as used in the Exhibits hereto has the same meaning as the term Owner.
- 1.12. Confidential Information. Information, ideas or materials now or hereafter owned by or otherwise in the possession or control of, or otherwise relating to, one Party and/or any of its Affiliates, including inventions, business or trade secrets, know-how, techniques, data, reports, drawings, specifications, blueprints, flow sheets, designs, engineering, construction, environmental, operations, marketing, transmission line, substation and generating station outage schedules and other operating restrictions and conditions, or other information, together with all copies, summaries, analyses, or extracts thereof, based thereon or derived therefrom, disclosed by one Party (the “transferor”) to the other Party or any of its Affiliates or any of their respective directors, employees or agents (the “transferee”); provided, however, Confidential Information of Owner shall also mean all BES Cyber System Information and any information, ideas or materials related to the Work or the Project obtained, developed or created by or for Contractor in connection with the Work, or delivered or disclosed to Owner in connection with the Work, together with all copies, reproductions, summaries, analyses, or extracts thereof, based thereon or derived therefrom; and provided, further, Confidential Information of Owner shall also mean information, ideas, or materials disclosed by Owner or any of its Affiliates, or deduced by Contractor, any Subcontractor or any of their Affiliates or any of their respective directors, employees or agents from information supplied by Owner or its Affiliates or agents, or as a result of visits by Contractor, any Subcontractor, or any of their Affiliates or any of their respective directors, employees or agents to the premises of Owner or any of its Affiliates or the Site, which relate to the Project. The terms of this Contract shall also be considered Confidential Information of the Owner.
- 1.13. Construction Manager. The permanent, on-Site construction manager designated by Contractor and approved by Owner in accordance with Section 4.5.
- 1.14. Contract. This Turnkey Contract for Engineering, Procurement and Construction Services, including all Exhibits hereto, as the same may be modified, amended, or supplemented from time to time in accordance with Article 17 and Section 37.4.
- 1.15. Contract Price. Shall mean the fixed amount for performing the Work that is payable to Contractor as set forth in Section 6.1, as the same may be modified from time to time in accordance with the terms hereof.
- 1.16. Contractor. The term has the meaning as set forth in the first paragraph of this Contract. [The JV partners shall undertake the duties and obligations of the Contractor under this Contract severally and jointly. Even though the joint venture partners have assumed the duties and obligations of Contractor under this Contract on a joint and several basis, the Contractor is referred to throughout the Contract Documents as if singular in number.] [If applicable.]

- 1.17. Contract Acquired Permits. The Applicable Permits defined in Exhibit “A”, Section 17 attached to a particular Release as Contractor Acquired Permits, and any other Applicable Permits required in connection with the Project or the Work except those Applicable Permits specified in Exhibit “A”, Section 17 attached to a particular Release as Owner Acquired Permits.
- 1.18. Contract Term. Shall mean the period commencing upon the execution of this Contract by Owner and continuing thereafter until December 31, 2020, unless earlier terminated as provided herein.
- 1.19. Contractor Cause. The term shall mean any of the following: (a) Contractor’s unexcused delay in achieving a Project Guaranteed Date or other breach by Contractor of its obligations under this Contract, or (b) a Defect.
- 1.20. Contractor Deliverables. Each of the material documents relating to each particular Release to be delivered to Owner for review and comment in accordance with the requirements of this Contract, including Article 12; which shall include the documents set forth on the Deliverables Schedule.
- 1.21. Contractor Environmental Assurance Program. The accepted material documents provided in compliance with the requirements of Exhibit A, Section 22.
- 1.22. Contractor Event of Default. The term has the meaning set forth in Section 20.1.
- 1.23. Contractor Safety Program. The term has the meaning set forth in Section 4.11.
- 1.24. Contractor Schedule Milestones. The Contractor schedule milestones set forth on Exhibit “G” as related to each particular Release.
- 1.25. Contractor’s Invoice. An invoice from Contractor to Owner in accordance with Section 7.1 and in the form of Exhibit “F” hereto.
- 1.26. Contractor Yard Sites. A site(s) in the vicinity of the Site acquired by the Contractor at its cost and used by the Contractor as a construction equipment or Equipment storage yard, a site for construction office trailers, a worker reporting location and/or other Project-related uses.
- 1.27. CPCN. The final certificate of public convenience and necessity for a particular project as issued by the relevant Governmental Authority.

1.28. Critical Path Item(s). With respect to each Project, any items demonstrated (with satisfactory evidence provided in accordance with Exhibit "G") to be on the critical path for the Critical Path Method Schedule prepared by Contractor in accordance with Section 4.26.

1.29. Critical Path Method Schedule. With respect to each Project a critical path method schedule prepared by Contractor describing the time of completion of the Work (including Critical Path Items) by Contractor, setting forth the dependencies among all Critical Path Items that affect the achievement of the Project Guaranteed Dates, meeting the requirements set forth in Exhibit "G", and developed and agreed by the Parties in accordance with Section 4.26.

1.30. Day or day. A calendar day, unless otherwise specified.

1.31. Defect. Unless otherwise specifically defined elsewhere herein, the term Defect includes any designs, engineering, materials, workmanship, Equipment, tools, supplies, installation or other Work, which:

- (a) Do not conform to the requirements of this Contract;
- (b) Are of defective or inferior manufacture, workmanship or materials;
- (c) Are inconsistent with Industry Standards; or
- (d) Are not suitable for a project of this type.

1.32. Delay Liquidated Damages. Liquidated damages for delay and for the amounts as set forth in Section 16.1.

1.33. Delay Notice. A Notice of a Force Majeure event, and the estimated delays associated with such event, as set forth in Section 9.2.

1.34. Deliverables Schedule. With respect to the schedule as described and to be agreed upon by the Parties in accordance with Section 12.4 that identifies the Contractor Deliverables to be delivered by Contractor, and Owner's period for review thereof, as such schedule may be updated from time to time in accordance with Section 12.4 of this Contract.

1.35. Dollars or \$. The lawful currency of the United States of America.

1.36. Drawings and Specifications. Drawings, specifications and documents that are part of the Scope of Work will be prepared by Contractor or any Subcontractor with respect to the

Work and submitted under this Contract (including those drawings, specifications and documents identified in the Deliverables Schedule and Exhibit "A", Section 23).

- 1.37. Effective Date. The term has the meaning as set forth in the first paragraph of this Contract.
- 1.38. Equipment. With respect to each Project, all materials, supplies, apparatus, machinery, equipment, parts, tools, components, instruments, appliances and appurtenances thereto that are: (a) required for prudent operation of the Project in accordance with Industry Standards; or (b) described in or required by this Contract, including Exhibit "A" and the Drawings and Specifications.
- 1.39. Exhibits. Each exhibit listed in Section 2.1 and attached hereto and incorporated herein in its entirety by this reference.
- 1.40. Final Completion. Satisfaction by Contractor or waiver by Owner of all of the conditions for Final Completion as set forth in Section 15.5.
- 1.41. Final Completion Certificate. A certificate in substantially the form as set forth in Exhibit "V" hereto.
- 1.42. Final Completion Date. The date on which Final Completion of each Project occurs.
- 1.43. Final Completion Guaranteed Date. The date that is ninety (90) calendar days after the Project Substantial Completion Date as such date may be modified in accordance with Article 17.
- 1.44. Final Contractor's Invoice. With respect to each Project, the final invoice submitted by Contractor in accordance with Section 7.6.
- 1.45. Final Payment. With respect to each Project, the final payment made by Owner to Contractor in accordance with Section 7.6.
- 1.46. Final Release and Waiver of Liens and Claims. With respect to each Project, a sworn statement and waiver of liens prepared by Contractor and each Major Subcontractor, as applicable, which provides that such Person unconditionally waives and releases all mechanic's liens, stop notices and bond rights with respect to all Work for which Contractor requested Final Payment in the applicable form set forth in Exhibit "Z".
- 1.47. Force Majeure.

- (a) Any war (whether declared or not), hostilities, blockade, revolution, insurrection, riot or terrorist act; expropriation, requisition, confiscation, or nationalization; closing of harbors, docks, canals, or other assistances to or adjuncts of the shipping or navigation of or within any place; rationing or allocation as imposed by law, decree, or regulation, or by any Governmental Authorities; actions of a Governmental Authority (other than with respect to a Party's compliance with Applicable Laws and Applicable Permits required in connection with a Party's performance under this Contract); fire or explosion; unusually severe storms and unusually severe weather conditions occurring in the vicinity of the Site, including flood, lightning strikes, tornado or hurricane; unusually severe tide, tidal wave or volcano; accidents of navigation or breakdown or damage of shipping vessels, or accidents to harbors, docks or canals; epidemic or quarantine; general labor disturbances not specific to Contractor's or Subcontractor's personnel; or any other event, matter, or thing, wherever occurring and whether similar or dissimilar to any of the foregoing; provided, however, that, in each case: (i) such event, matter or circumstance is not within the reasonable control and is without the fault or negligence of, or willful misconduct of, or breach of this Contract by the Party whose performance is affected thereby; (ii) such event, despite the exercise of commercially reasonable efforts, cannot be or be caused to be prevented, avoided or removed by such Party; and (iii) to the extent commercially reasonable, the Party affected has taken precautions and measures to avoid the effect of such event on such Party and mitigate the consequences thereof.
- (b) In relation to any labor strikes, disputes, disturbances, or other matters, the following shall not constitute Force Majeure: (i) any labor shortages involving the employees or workers of Contractor or a Subcontractor; or (ii) any labor disturbance or dispute of Contractor's and/or any Subcontractor's personnel taking place at the Site or a facility of Contractor or Subcontractor (except if such action is part of a national action).
- (c) In addition, and notwithstanding anything in this definition to the contrary, the following shall not constitute Force Majeure: (i) mechanical or Equipment failures (so long as such failure was not itself caused by an event included in part (a) of this definition); (ii) any Site Condition (so long as the delay was not itself caused by an event included in part (a) of this definition); (iii) road embargos by Governmental Entities as a result of seasonal or other weather conditions; (iv) winds of any speed (except this shall not mean a tornado or hurricane) or any seasonal or climatic weather conditions (unless such condition is unusually severe); (v) any condition described in (a) above that results in increased costs of performance but does not otherwise affect a Party's ability to perform; (vi) delays in customs clearance (so long as the delay was not itself caused by an event included in part (a) of this definition); (vii) delays, breakdowns and accident in transportation other than delays in transportation due to an event included in part (a) of this definition; and (viii) inability of employees or workers of Contractor or a Subcontractor to gain physical access to the Site or a Contractor Yard Site (so long as such inability was not itself caused by an event included in part (a) of this definition).

- 1.48. Foundation Completion. The term has the meaning set forth in Section 13.1.
- 1.49. Foundation Completion Certificate. A certificate in substantially the form as set forth in Exhibit "V" hereto.
- 1.50. Full Notice to Proceed. The term has the meaning set forth in Section 8.2.
- 1.51. Full Notice to Proceed Date. The term has the meaning set forth in Section 8.2.
- 1.52. Governmental Authorities. All United States and other national, federal, state, provincial and local governments and all agencies, authorities, departments, instrumentalities, courts, corporations, or other subdivisions of each having or claiming a regulatory interest in or jurisdiction over the Site, the Contractor Yard Site, the Project, the Work or the Parties to this Contract.
- 1.53. Hazardous Materials. Any chemical, material or substance in any form, whether solid, liquid, gaseous, semisolid, or any combination thereof, whether waste material, raw material, chemical, finished product, byproduct, or any other material or article, that is defined, listed or regulated or as to which liability could be imposed, under Applicable Laws as a "hazardous" or "toxic" substance or waste or material, or as a "pollutant" or "contaminant," (or words of similar meaning or import) or is otherwise listed or regulated under Applicable Laws, or as to which liability could be imposed, under Applicable Laws including, without limitation, petroleum products, petroleum derived substances, radioactive materials, asbestos, asbestos containing materials, polychlorinated biphenyls, urea formaldehyde foam insulation, and lead-containing paints or coatings.
- 1.54. Industry Standards. Those standards of engineering, construction, operation, workmanship, Equipment and components specified in Exhibit "A", provided, however, that if the relevant standard is not so specified or is ambiguous therein, then Industry Standards shall mean those standards of construction, workmanship, operation, care and diligence normally practiced in the United States by nationally recognized engineering and construction firms in performing services of a similar nature and in accordance with: (a) Applicable Laws and Applicable Permits; (b) other standards and codes established for such work; and (c) those standards (including of operation) established and/or recognized as prudent utility practice in the Western United States. Industry Standards are not necessarily defined as the optimal standard, practice or method to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances. For purposes of this definition: (i) the Contractor Deliverables must comply with Industry Standards at the time that they are submitted to Owner; and (iii) the Work performed must comply with the Industry Standards at the time that it is performed.
- 1.55. Interconnection. The connection of each applicable part of the Project to the Transmission Grid such that the applicable part of the Project is energized at the nominal

system operating voltage for which such part of the Project is designed as further described in Exhibit "A" and/or such that the Project delivers power and energy to energize the Project for Tests.

1.56. Key Personnel. The natural persons named in Exhibit "J" Land Rights Agreements. Those agreements and other documents or instruments with respect to the Site identified and set forth in Exhibit "A", Section 18

1.57. Letter of Credit. The term shall mean the Performance LOC, the Retainage LOC (if applicable) and the Warranty LOC.

1.58. Lien Indemnitees. The term has the meaning set forth in Article 32.

1.59. Limited Notice to Proceed. A Notice provided by Owner directing Contractor to perform a specified range of services or deliverables as described within Exhibit A, G or I, pursuant to the provisions of Section 8.1.

1.60. Loss(es). Any and all liabilities (including liabilities arising out of the application of the doctrine of strict liability), obligations, losses, damages, penalties, fines, claims, actions, suits, judgments, costs, expenses and disbursements, whether any of the foregoing be founded or unfounded, (including reasonable legal fees and expenses and reasonable third party costs of investigation), of whatsoever kind and nature and whether or not involving damages to the Project or the Site.

1.61. Major Subcontractor. Any Subcontractor where the aggregate value of the applicable subcontracts and purchase orders between it and the Contractor (or other Subcontractor as applicable) with respect to the Project exceeds (or is reasonably expected by Contractor to exceed) \$500,000.

1.62. .

1.63. Materials Warranty. The warranty of Contractor under Section 18.2.

1.64. Maximum Aggregate Liquidated Damages. Ten percent (10%) of the Contract Price as the Contract Price may be adjusted from time to time in accordance with the terms hereof.

1.65. Mechanical Completion Test Procedures. The written procedures for the Mechanical Completion Tests produced by Contractor and agreed to by Owner in accordance with Article 14 and Exhibit "A".

- 1.66. Mechanical Completion Tests. Those tests identified to be performed by the Contractor in connection with the construction and commissioning of the Project in accordance with Exhibit “A” and Article 14.
- 1.67. Monthly Progress Report. A written monthly progress report prepared by Contractor in form and content generally in accordance with Exhibit “A”, Section 19 Notice. A written communication between the Parties required or permitted by this Contract and conforming to the requirements of Article 33.
- 1.68. Owner. PacifiCorp, an Oregon Corporation or as Owner may assign to an Affiliate per Article 29.
- 1.69. Owner Acquired Permits. The Applicable Permits defined as Owner Acquired Permits in Exhibit “A”, Section 17.
- 1.70. Owner Caused Delay. Owner’s unexcused delay in performing or failure to perform any obligation of Owner under this Contract (other than as a result of Force Majeure or by Owner’s exercise of rights under this Contract, including the exercise by Owner of the right to have defective or nonconforming Work corrected or re-executed).
- 1.71. Owner’s Engineer. The engineering firm or other engineer or engineers (which may be employees of Owner) selected and designated by Owner.
- 1.72. Owner’s Facilities. The term shall mean any facilities owned, operated or otherwise controlled by Owner, which requires Owner authorization to obtain access.
- 1.73. Owner’s Scope. The work associated with the Project for which Owner is responsible and which is expressly identified as such in Exhibit A.
- 1.74. Owner Event of Default. The term has the meaning set forth in Section 20.4.
- 1.75. Owner Milestones. The term has the meaning set forth in Section 3.2.
- 1.76. Parent Guarantor. The Parent Guarantor is [_____].
- 1.77. Parent Guaranty. The guarantee of the Parent Guarantor referred to in Section 35.2 in the form set forth in Exhibit “M”.
- 1.78. Parent Legal Opinion. A legal opinion of legal counsel to the Parent Guarantor reasonably acceptable to Owner in the form set forth in Exhibit “M”.

- 1.79. Partial Release and Waiver of Liens and Claims. A sworn statement and waiver of liens prepared by Contractor and each Major Subcontractor, as applicable, which provides that such Person waives and releases all mechanic's liens, stop notices and bond rights with respect to that portion of Work for which Contractor requested payment in the current Contractor's Invoice conditioned upon payment by Owner of the amount of such Contractor's Invoice in the applicable form set forth in Exhibit "Z".
- 1.80. Party and Parties. The terms have the meanings set forth in the first paragraph of this Contract.
- 1.81. Performance LOC. An irrevocable transferable letter of credit that is (a) issued for the benefit of Owner by a Qualified Bank that is acceptable to Owner, in Owner's sole discretion; (b) is in the stated amount equal to ten percent (10%) of the Contract Price; and (c) is substantially in the form of Exhibit "O-1". The Performance LOC terminates in accordance with Section 35.2.
- 1.82. Person. Any individual, corporation, company, voluntary association, partnership, incorporated organization, trust, limited liability company, or any other entity or organization, including any Governmental Authority.
- 1.83. Prime Rate. The interest rate per annum published in The Wall Street Journal as the "prime rate" from time to time (or if more than one rate is published, the arithmetic mean of such rates), determined as of the date the obligation to pay interest arises.
- 1.84. Progress Payment(s). A discrete portion of the Contract Price, payable pursuant to the Progress Payment Schedule, as a progress payment for completion of discrete portions of Work, in accordance with Section 7.1.
- 1.85. Progress Payment Schedule. A schedule of payments attached as Exhibit "D" Attachment 1, setting forth payments, calculated based upon a forecast earned value basis from the Critical Path Schedule, payable to the Contractor, in accordance with Section 7.1, pursuant to the Progress Payment Schedule, as a payment for maintaining the Interim Progress Milestones in accordance with the Interim Progress Milestones and Exhibit "G".
- 1.86. Project. The complete electric substations to be designed, procured, constructed, tested and commissioned under this Contract, together with all ancillary Equipment and subsystems, together with all supporting improvements and connections, as generally described in, and including all items described in, the Scope of Work. The Project generally consists of the Work related the engineering, procurement and construction of three (3) substations 345 kV substations and associated transmission structures known Dixie Deer, Red Butte, and Sigurd substations. The term Project shall mean three (3) substations; a) Aeolus 500/230kV, Anticline 500/345kV, Jim Bridger 345kV Bay Expansion., The Project generally consists of the Work.

- 1.87. Project Guaranteed Dates. The Project Mechanical Completion Guaranteed Date, the Project Substantial Completion Guaranteed Date and the Final Completion Date (provided, however, that the Final Completion Date does not have any Delay Liquidated Damages related thereto).
- 1.88. Project Manager. The Project Manager designated by Contractor and approved by Owner pursuant to Section 4.5.
- 1.89. Project Mechanical Completion. Satisfactory completion by Contractor of all conditions necessary to achieve Project Mechanical Completion for the entire Project, as set forth in Section 13.2.
- 1.90. Project Mechanical Completion Certificate. A certificate in substantially the form as set forth in Exhibit "V" hereto, which Contractor shall submit upon completion of the entire Scope of Work as described in Exhibit "A", in accordance with the definition within Article 1.89.
- 1.91. Project Mechanical Completion Date. The date on which Project Mechanical Completion actually occurs and the entire Scope of Work described in Exhibit "A" is completed in accordance with the definition within Article 1.894.
- 1.92. Project Mechanical Completion Guaranteed Dates. The Project Mechanical Completion milestone date(as such date may be modified in accordance with Article 17), as set forth in Exhibit G, Attachment G.1.1.
- 1.93. Project Representative. The Project Representative designated by Owner pursuant to Section 3.1.
- 1.94. Project Warranties. The warranties of Contractor as set forth in Article 18.
- 1.95. Punchlist. A schedule of Punchlist Items developed pursuant to Section 15.1(h), which list must be reasonably satisfactory to Owner.
- 1.96. Punchlist Items. Each item of Work that: (a) Owner or Contractor identifies as requiring completion or containing Defects; (b) does not impede the ability of Owner to safely operate the Project in accordance with Industry Standards; (c) does not affect the operability (including the capacity, efficiency, reliability, or cost effectiveness), safety or mechanical or electrical integrity of the Project or the Transmission Grid; and (d) the completion or repair of which will neither interfere with, nor adversely affect, the performance of the Project or the Transmission Grid.
- 1.97. Qualified Bank. A United States branch of any United States bank whose secured debt

obligations or long-term deposits are rated at least “A-” by Standard & Poors (or the equivalent rating thereof by Moody’s) as at the date of issuance, and during the term, of any Letter of Credit.

- 1.98. Quality Assurance Program. The Contractor’s quality assurance program for the Work as defined in Section 4.17.
- 1.99. Required Manuals. All manufacturers’ operating data and manuals, Equipment and parts manuals, integrated and coordinated operation and maintenance manuals and instructions, and training aids reasonably necessary to safely, effectively and efficiently commission, test, start up, operate, maintain and shut down the Project, including those set out in the Deliverables Schedule.
- 1.100. Retainage. The amount withheld from payments to Contractor pursuant to Section 7.5.
- 1.101. Retainage LOC. An irrevocable transferable letter of credit that is (a) issued for the benefit of Owner by a Qualified Bank that is acceptable to Owner, in Owner’s sole discretion; (b) is in the amount not less than the amount as required by Section 7.5; and (c) is substantially in the form of Exhibit “O-2”. The Retainage LOC terminates in accordance with Section 7.6.
- 1.102. Schedule Recovery Plan. The term has the meaning set forth in Section 8.3.
- 1.103. Scope of Work. The requirements and specifications regarding the Work set forth under a particular Release, including Exhibit “A”.
- 1.104. Sensitive Personnel. The term shall mean all Personnel with authorized unescorted physical access or authorized cyber access to Owner’s CIPS Covered Assets.
- 1.105. Site. Those areas of real estate described in Exhibit “A”, Section 18 for the performance of Work which may consist of existing or new substation sites, including any additional areas as may, from time to time, be designated in writing by Owner (in Owner’s sole discretion) for Contractor’s use hereunder. The term Site shall mean all three (3) substation sites collectively, and each individual substation Site, as the context requires.
- 1.106. Site Conditions. The term has the meaning set forth in Section 4.38.
- 1.107. Spare Parts. The term has the meaning set forth in Section 4.32.
- 1.108. Subcontractor. Any Person, other than Contractor, performing any portion of the

Work (including any Subcontractor of any tier and any Vendor) in furtherance of Contractor's obligations under this Contract.

- 1.109. Substantial Completion. Satisfaction by Contractor or waiver by Owner of all of the conditions for Substantial Completion as set forth in Section 15.1.
- 1.110. Substantial Completion Certificate. A certificate in substantially the form as set forth in Exhibit "V" hereto.
- 1.111. Substantial Completion Date. The date, on which Substantial Completion actually occurs.
- 1.112. Substantial Completion Guaranteed Date. The Substantial Completion milestone date (as such date may be modified in accordance with Article 17), as set forth in Exhibit G, Attachment G.1.1.
- 1.113. Transmission Grid. The electric transmission and distribution system of Owner, or any other affected transmission owner or operator, and the electric transmission and distribution systems interconnecting to or adjacent to Owner's or other affected transmission owner or operator, electric transmission and distribution system.
- 1.114. Unescorted Personnel. The term shall mean all Personnel with authorized unescorted physical access to Owner's Facilities.
- 1.115. U.S. Customary System. The primary system of weights and measures (other than the metric system) used in the U.S. today inherited from, but now different from, the British Imperial System of weights and measures.
- 1.116. Vendor(s). Persons that supply Equipment to Contractor or any Subcontractor in connection with the performance of the Work.
- 1.117. Warranty LOC. An irrevocable transferable letter of credit that is: (a) issued for the benefit of Owner by a Qualified Bank that is acceptable to Owner, in Owner's sole discretion; (b) is in the stated amount equal to five percent (5%) of the Contract Price; and (c) is substantially in the form of Exhibit "O-3". The Warranty LOC shall terminate in accordance with Section 35.2.
- 1.118. Warranty Period. The term has the meaning as set forth in Section 18.3.
- 1.119. Warranty Procedures. The term has the meaning as set forth in Section 18.8.

1.120. Work. All work and services required or appropriate in connection with the engineering, procurement, manufacturing, construction, erection, installation, training, commissioning (including inspection), testing and completion and all Equipment, and as further described in Section 4.1, including the Pre-Construction Services.

1.121. Workers' Compensation Laws. The term has the meaning as set forth in Section 4.24.

2. EXHIBITS, INTERPRETATION, CONFLICTS

2.1 Exhibits. This Contract includes the following Exhibits annexed hereto (and incorporates all attachments to such Exhibits, if any) and any reference in this Contract to an Exhibit by letter designation, Exhibit or title shall mean one of the following so indicated and such reference shall indicate such Exhibit herein.

EXHIBITS

A	Scope of Work and Specifications
B	Pre-Construction Services
C-1	
D	Progress Payment Schedule and Schedule of Values
E	Change in Work Form
F	Form of Contractor's Invoice
G	Critical Path Method Schedule
H	Deliverables Schedule I Owner Milestones
J	Key Personnel
K	Not Used
L	Not Used
M	Form of Parent Guarantee and Legal Opinion
N	Not Used
O	Form of Letters of Credit
P	Form of Assignment Clause for Subcontractors
Q	Insurance
R	Detailed Pricing Schedules, Change in Work Rates and Unit Price Change in Work Rates
S	Background Check Criteria / NERC-CIPS Standards
T	Contractor's Safety Assurance Program
U	Contractor's Quality Assurance Programs
V	Forms of Completion Certificates
W	Owner's Site Access and Safety Requirements
X	Not Used
Y	Property Retirement Unit Reporting Requirements
Z	Forms of Partial and Final Release and Waiver of Liens and Claims

2.2 Interpretation. Except as otherwise expressly noted:

- (a) Terms defined in a given number, tense or form shall have the corresponding meaning when used in this Contract with initial capitals in another number, tense or form;
- (b) Except as otherwise expressly noted, reference to specific Sections, Subsections and Exhibits are references to such provisions of or attachments to this Contract;
- (c) References containing terms such as “hereof,” “herein,” “hereto,” “hereinafter,” and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Contract taken as a whole;
- (d) “Includes” or “including” shall not be deemed limited by the specific enumeration of items, but shall be deemed without limitation;
- (e) References to agreements, certificates and other legal instruments include all subsequent amendments thereto, and changes to, and restatements or replacements of, such agreements, certificates or instruments that are duly entered into and effective against the parties thereto or their permitted successors and assigns;
- (f) References to Persons include their permitted successors and assigns;
- (g) A reference to a statute or to a regulation issued by a Governmental Authority includes the statute or regulation in force as of the date hereof, together with all amendments and supplements thereto and any statute or regulation substituted for such statute or regulations;
- (h) A reference to a governmental agency, department, board, commission or other public body or to a public officer includes an entity or officer that or who succeeds to substantially the same functions as those performed by such public body or officer as of the Effective Date;
- (i) Unless the context clearly intends to the contrary, words singular or plural in number shall be deemed to include the other and pronouns having a masculine or feminine gender shall be deemed to include the other;

- (j) Unless otherwise stated, words which have well known technical or construction industry meanings are used in this Contract in accordance with such recognized meanings; and
- (k) The words “acceptable to”, “approved by,” “satisfactory to,” “determine that,” “consent of” or other phrases of like effect or import shall mean that, unless expressly stated otherwise (including where the Contract provides a time period for such action), the Party exercising such right of acceptance, approval or judgment shall be reasonable under the circumstances and shall not unduly delay or withhold such acceptance, approval, consent or judgment.

2.3 Conflicts in Documentation.

- (a) In the event of any conflict between this document and any of the Exhibits hereto, the terms and provisions of this document, as amended from time to time, shall control, unless expressly stated otherwise in this document.
- (b) Should there be any conflict between or within the Exhibit(s) (including the attachments to the Exhibits) hereto, the Contractor shall promptly give Notice to Owner and shall secure written instructions from the Project Representative before proceeding with the Work affected thereby. Upon receiving written instructions from the Project Representative, Contractor shall proceed as instructed.

2.4 Documentation Format. This Contract and all documentation to be supplied hereunder shall be in the English language.

3. **RESPONSIBILITIES OF OWNER.**

Owner shall:

- 3.1 Project Representative. Designate (by a Notice delivered to Contractor) a Project Representative, who shall act as a single point of contact for Contractor with respect to the prosecution of the Work but who shall not be authorized to execute or approve any Change in Work or any amendments to this Contract.
- 3.2 Owner Milestones. Owner shall commence or complete, as the case may be, the Owner’s Scope in accordance with the milestones set forth on Exhibit “I” (“Owner Milestones”) in accordance with the schedule, terms and conditions set forth in Exhibit “I” with respect to each applicable Owner Milestone. Owner and Contractor agree that

the timely completion of the Contractor Schedule Milestones by Contractor is an important aspect of this Contract. In the event Contractor's failure to timely complete a Contractor Schedule Milestone by the date provided in Exhibit G.1.1 or a Contractor Cause results in Owner's failure to complete an Owner Milestone by the applicable date provided in Exhibit "I" or otherwise causes Owner to incur additional costs and expenses in connection with the performance of its work related to any Owner Milestones, then: (a) the Owner Milestone date shall be adjusted to reflect any delays to the extent caused by Contractor; and (b) Contractor shall pay Owner for any additional costs and expenses reasonably incurred by Owner as a result of any such delay.

3.3 Ministerial Assistance. In a reasonably prompt manner after Notice from Contractor, execute applications as Contractor may reasonably request in connection with obtaining any Contractor Acquired Permits. Contractor shall indemnify, defend, and hold harmless Owner from and against any and all Losses that Owner may incur as a result of signing any such applications at Contractor's request.

3.4 Owner Acquired Permits. Obtain with Contractor's reasonable assistance to be provided at no cost to Owner, and pay for all Owner Acquired Permits.

3.5 Access to Site. Subject to Section 4.18, the Land Rights Agreements and the terms of the Applicable Permits, Owner shall make the designated parts of the Site reasonably available to Contractor on or prior to the applicable Owner Milestone for such part of the Site so as to permit the Contractor to perform the Work applicable to such part of the Site; provided, however, that Contractor shall coordinate with Owner regarding initial entry onto the Site or any part thereof and contact with the Persons who own property on or near, or have granted license or easement rights in and to, the Site. Contractor shall be solely responsible for all costs and expenses required to upgrade (including paving if required), repair and maintain any existing roads and to construct, repair and maintain any temporary roads in connection with the Project. Contractor shall be solely responsible for all costs and expenses required to repair any damages to the Site arising as a result of Contractor's performance of the Work; and without limiting the generality of this sentence, shall also be responsible for the specific damages in accordance with Exhibit "A", Section 18.

3.6 Hazardous Materials. Owner shall be responsible for all Hazardous Materials (other than Hazardous Materials for which Contractor is responsible pursuant to Section 4.33) at the Site as of prior to the Effective Date and for any Hazardous Materials subsequently brought to the Site by Owner or anyone employed by the Owner (other than Contractor, Subcontractor, anyone employed by them, or anyone for whose acts Contractor or any Subcontractor may be liable). Owner shall, with respect to those Hazardous Materials identified above in this Section, and at Owner's sole cost and expense, be responsible for: (a) the proper handling, storage, collection, containment, removal, transportation and disposal from the Site of all such Hazardous Materials; and

(b) any environmental condition caused by such Hazardous Materials.

4. RESPONSIBILITIES OF CONTRACTOR.

Contractor shall:

4.1 Performance of Work. Perform or cause to be performed all Work for the engineering, procurement, construction, erection, installation, commissioning and testing of the Project and the other materials, equipment, machinery and facilities; which work and services shall include the provision of all permits, materials, Equipment, machinery, tools, labor, transportation, administration and other services and items required to complete and deliver to Owner the fully integrated and operational Project, all on a fixed-price, turnkey, guaranteed-date basis, and otherwise in accordance with the Contract, Applicable Laws and Industry Standards. Contractor hereby agrees to perform or cause to be performed all Work upon the terms and conditions of this Contract.

Contractor shall perform and complete all of the Work on a turnkey basis without any Defects, in accordance with the terms of this Contract and in compliance with Industry Standards, Applicable Laws and Applicable Permits; provided, however, that where any such standard, law, permit or contract provides for less stringent standards than those specifically stated in this Contract, the standards specifically stated in this Contract shall govern.

Where this Contract describes a portion of the Work in general, but not in complete detail, the Parties acknowledge and agree that the Work includes any incidental work that within the construction industry is customarily included in projects of the type contemplated by this Contract or by Industry Standards.

Contractor shall design the Project so that it is capable of operation, at the design levels specified in the Scope of Work, including Exhibit "A", in compliance with Industry Standards, Applicable Laws and Applicable Permits. Contractor shall design the Project so that it will allow operation of the Project and its component parts over the full range of operative and ambient conditions while meeting Applicable Laws, Applicable Permits and Industry Standards. Contractor acknowledges that this Contract constitutes a fixed price obligation to engineer, design, procure, construct and test through Substantial Completion a turnkey project, complete in every detail, within the time and for the purpose specified herein by Owner.

References to the obligations of Contractor under this Contract as being "turnkey" and performing the Work on a "turnkey basis" mean that Contractor is obligated to supply all of the Equipment, labor and design services and to supply and perform all of the Work, in each case as may reasonably be required, necessary, or appropriate (whether or not specifically set forth in this Contract) to complete the Work such that the Project satisfies the applicable terms and conditions set forth in this Contract, all for the Contract Price.

The Project shall be built in a manner so that none of the Work (including the Equipment) will be determined, for insurance purposes, to be “prototype equipment.”

4.2 Cost of Work. Furnish, be responsible for, and pay the cost of all of the Work including labor, materials, Equipment and supervision necessary to engineer, procure, expedite, deliver, receive, secure, off-load, store, construct, inspect, commission and test the Project, in strict accordance with the provisions of this Contract, including all access roads, site work, footings, foundations, pilings, drilled piers, construction materials, construction equipment, and auxiliaries.

4.3 Facilities. Provide all communication facilities, material storage and laydown areas, construction water, construction electricity and sanitary facilities to be used by Contractor and Subcontractors during performance of the Work.

4.4 Organization. Maintain a qualified and competent organization at the Site with adequate capacity and numbers of construction and commissioning personnel, construction equipment, tools, materials, supplies and facilities to execute the Work in a safe, efficient, environmentally sound, and professional manner at a rate of progress in accordance with the Critical Path Method Schedule.

4.5 Project Manager/Staff. Designate a Project Manager acceptable to Owner who will have full responsibility for the prosecution of the Work and will act as a single point of contact in all matters on behalf of Contractor. Designate a Construction Manager and provide staff to supervise, manage and coordinate the Work of Contractor and Subcontractors on the Site. The Key Personnel shall at all times hold the positions and be dedicated to the performance of the duties described in Exhibit “J”. Any replacement of the Project Manager or Key Personnel shall be subject to the prior written consent of Owner which consent will not be unreasonably withheld. If Owner fails to respond to a request for consent within ten (10) Business Days after Owner’s receipt of Contractor’s request, Owner shall be deemed to have consented to the proposed individual.

4.6 Contractor Acquired Permits. Obtain all Contractor Acquired Permits and provide copies to Owner at Owner’s request.

4.7 Inspection. Perform all inspection; expediting, quality surveillance, and other like services required for performance of the Work, including inspecting all materials and Equipment that comprise the Project or that are to be used in the performance of the Work. Contractor shall be responsible for determining all utility locations, underground obstructions, archeological and cultural resources at its own expense prior to undertaking any Work at the Site.

4.8 Maintenance of Site. Maintain the Site and any Contractor Yard Site clear of Hazardous Materials, debris, waste material and rubbish. All trash, debris and waste materials shall be

removed from the Site and disposed of by Contractor, in a timely manner. All waste must be disposed of at a permitted sanitary disposal site, and Contractor shall provide Owner copies of all waste disposal manifests. Combustible material shall be promptly removed from the Site or Contractor's Yard Site, and shall not be allowed to accumulate. Burning on the Site and the Contractor Yard Site is prohibited. Promptly upon the completion of the Work, the Work shall be cleaned and all scrap, trash, and waste materials and debris resulting from Work under this Contract shall be removed from the Site and the Contractor Yard Site. All Contractor-owned facilities, materials and construction equipment shall be removed from the Site and the Contractor Yard Site and such sites shall be left in its original condition, except to the extent it has been modified pursuant to this Contract. If Contractor fails to clean up as provided herein, Owner may do so and the reasonable cost thereof shall be charged to Contractor or offset against payments hereunder.

4.9 Price Allocation Schedule. Upon Owner's reasonable requests, provide a price allocation schedule for the Work and other information reasonably necessary for Owner to maintain segregated accounts for its accounting and tax records, ownership records and/or fixed asset records.

4.10 Site Security. Contractor shall provide all necessary and reasonably appropriate security measures for the protection of the Work, the Site, the Contractor Yard Site and the Project. Contractor will consult with and cooperate with Owner in the development and implementation of security practices and programs for the Project. Contractor shall prepare and maintain accurate reports of incidents of loss, theft, or vandalism and shall furnish these reports to Owner in a timely manner. Contractor shall not be entitled to any adjustment of the Substantial Completion Date or any adjustment to the Contract Price arising from incidents of Equipment theft or vandalism.

4.11 Contractor Safety Program. Contractor shall comply with the requirements of Exhibit "A", the Contractor Safety Program set out in Exhibit "T", and Owner's Safety Requirements set out in Exhibit "W" (including any third party safety requirements that are applicable to portions of the Work and stated in Exhibit "W"), and provide all necessary and reasonably appropriate safeguards at the Site and any Contractor Yard Site for the protection of all Persons and the Work. Contractor shall not perform any Work at the Site until and unless a safety plan applicable to such Work is either included in Exhibit "T" or included in the fully integrated safety program delivered and accepted by Owner in accordance with this Section 4.11. In the event Contractor fails to comply with the safety program requirements set forth in this Contract, Owner shall be entitled to immediately suspend the Work until non-compliance is rectified, and neither the Contract Price nor any other Project Guaranteed Dates shall be adjusted as the result of any such suspension.

Within sixty (60) days of the effective date, Contractor shall provide, by Notice to Owner, a Contractor Project safety program that has fully integrated the requirements in Exhibit "A", Exhibit "T" and Exhibit "W" and that is prepared specifically for this Project (the "Contractor Safety Program"). Owner shall have the right to review and comment on such program and if Owner provides Contractor with comments, then Contractor shall incorporate such changes into such program. If Owner fails to comment within fifteen (15) days after receipt of such notice, Owner shall be deemed to have accepted such Contractor

Safety Program. Upon acceptance (or deemed acceptance) of such program by Owner, such program shall supersede and be deemed to replace the program attached as Exhibit "T" hereto. In the event the standards or requirements derived from the foregoing are inconsistent, Contractor shall perform, or cause to be performed, its obligations in accordance with the requirements of the most stringent rule, standard, criteria or guideline. Notwithstanding Owner's review and approval of the Contractor Safety Program, Contractor shall remain solely responsible for performing the Work in accordance with this Contract.

Contractor shall provide Project Representative with immediate telephone or email notification followed by Notice to Owner within twenty-four (24) hours of any accidents and/or occupational injuries or vehicle accidents that occur to any of Contractor's or Subcontractor's employees working on or in the vicinity of the Site or a Contractor Yard Site, any damages to Owner's facilities, any property damage, bodily injury, electric contact, or fatality that arises in connection with the performance of this Contract on or in the vicinity of the Site or Contractor Yard Site which such notice shall be on the Owner's form included in the materials attached as part of Exhibit "W". Contractor will furnish Owner with a copy of all accident reports or work injury reports as promptly as possible and in any event within twenty-four (24) hours of such accident or work injury and in the event any further reports are completed after such initial reporting, Contractor shall promptly provide Owner a copy. Contractor shall assist Owner in any investigation and provide information as reasonably requested by Owner relating to the incident. Contractor shall provide Owner with a 'root cause analysis' of the accident or incident within three (3) business days of the accident or incident occurring. All accident and incident reports shall comply with Applicable Laws. Contractor shall provide Owner with copies of all written communications with Governmental Authorities and insurance companies (including any notices) with respect to accidents that occur at the Site.

4.12 Equipment. Arrange for complete handling of all Equipment and construction equipment including inspection, expediting, quality assurance, shipping, loading, unloading, customs clearance, permitting and licensing, receiving, storage, and claims.

4.13 Construction Materials and Supplies. Provide all temporary construction materials, office and meeting facilities, all communication lines and facilities, warehousing and storage facilities, fuel storage facilities, sanitary facilities, parking facilities for Contractor's and Subcontractors work force, laydown areas, equipment, supplies, construction utilities and facilities, special tools, and commissioning supplies reasonably necessary or appropriate for the construction, testing, commissioning, and operation and maintenance of the Project until achievement of Substantial Completion. Contractor shall provide internet access and telephone access at the construction Site office. By delivery of a Notice to Owner prior to the disposition of any surplus construction materials, parts, or supplies remaining on the Site on the Substantial Completion Date (other than materials and supplies necessary to achieve Final Completion), Contractor shall give Owner the option to purchase all or part of such items at a price not exceeding Contractor's cost therefor. Owner shall exercise such right, if it so elects, within thirty (30) days after receipt of such Notice.

4.14 Contractor's Personnel/Drugs, Alcohol and Firearms. Contractor shall employ in the performance of the Work only persons qualified for the same. Contractor shall at all times enforce strict discipline and good order among its employees and the employees of any Subcontractor of any tier. Contractor shall not permit or allow the introduction or use of any firearms, illegal drugs or intoxicating liquor upon the Work under this Contract, or upon any of the grounds occupied, controlled or used by Contractor in the performance of the Work. Contractor shall immediately remove from the Work, whenever requested by Owner, any person considered by Owner to be incompetent, insubordinate, careless, disorderly, or in violation of the above restriction on firearms, illegal drugs or intoxicating liquor, or under the influence of illegal drugs or intoxicating liquor, and such person shall not again be employed in the performance of the Work herein without the consent of Owner.

4.15 Applicable Laws/Permits. Contractor shall provide all technical support and information, and other reasonably requested information, to assist the Owner in applying for and obtaining Owner Acquired Permits. Contractor shall comply in all respects with all Applicable Laws and Applicable Permits relating to the Project, the Site, the Contractor Yard Site and the performance of the Work. The Contractor Acquired Permits either have been obtained by Contractor and are in full force and effect on the Effective Date or will be obtained by Contractor and will be in full force and effect on or prior to the date on which they are required, under Applicable Laws, to be in full force and effect, so as to permit Contractor to commence and prosecute the Work to completion in accordance with the Critical Path Method Schedule.

Without limiting the generality of the foregoing, Contractor shall comply with all Applicable Laws and Applicable Permits regarding environmental matters. Prior to proceeding with construction activities, Contractor must develop an environmental assurance plan complying with the requirements of Exhibit "A", Section 22. Contractor's environmental assurance program will be subject to Owner's review and approval. Delays incurred due to Contractor's failure to provide an environmental assurance program approved by Owner will not constitute a Change in Work. Within forty-five (45) days of the Effective Date, Contractor shall provide, by Notice to Owner, a Contractor environmental assurance program that has fully integrated the requirements in Exhibit "A", Section 22 and that is prepared specifically for this Project (the "Contractor Environmental Assurance Program"). Owner shall have the right to review and comment on such program and if Owner provides Contractor with comments, then Contractor shall incorporate such changes into such program. If Owner fails to comment within fifteen (15) days after receipt of such notice, Owner shall be deemed to have accepted such Contractor Environmental Assurance Program. Upon acceptance (or deemed acceptance) of such program by Owner, such program shall supersede and be deemed to replace the program attached as Exhibit A, Section 22 hereto. In the event the standards or requirements derived from the foregoing are inconsistent, Contractor shall perform, or cause to be performed, its obligations in accordance with the requirements of the most stringent rule, standard, criteria or guideline and in all events in compliance with Applicable Laws and Applicable Permits. Notwithstanding Owner's review and approval of the Contractor Environmental Assurance Program, Contractor shall remain solely responsible for performing the Work in accordance with this Contract.

Contractor shall be responsible for all Losses that may arise (including those that Owner pays or becomes liable to pay) because of non-compliance with requirements in this Section, other than any such Losses arising from: (a) the acts or omissions of Owner, Owner's employees and agents, or other third parties under the control of Owner, or (b) Hazardous Materials for which Owner is responsible pursuant to Section 3.6.

So long as Contractor has complied with its obligation to provide support and information as described above, Contractor shall be entitled to request a Change in Work in accordance with Article 17 in the event the final conditions, obligations and/or requirements of an Owner Acquired Permit (as identified in Exhibit "A", Section 17 as not being in final form as of the Effective Date) are different than those conditions, obligations and/or requirements that should have been reasonably anticipated by the Contractor based upon the Scope of Work, Industry Standards, and the applicable permit application or draft permit (if and as provided to Contractor by Owner prior to the Effective Date) and such difference has a materially adverse effect on Contractor's costs and schedule for performing the Work. Notwithstanding the forgoing, variances to Owner Acquired Permits that are not directed and approved by Owner will not constitute a Change in Work.

4.16 Replacement at Owner's Request. Within two (2) Business Days after request by Owner, remove from the Site and performance of the Work, and cause any Subcontractor to remove from the Site and performance of the Work, and as soon as reasonably practicable, replace, any individual performing the Work (including any of the Key Personnel) whom Owner believes to be creating a safety hazard or a material risk of: (a) non-achievement of a Project Guaranteed Date; or (b) material non-performance by Contractor in accordance with this Contract.

4.17 Quality Assurance Programs. Use effective quality assurance programs, acceptable to Owner and consistent with the requirements of Exhibit "A" and the Quality Assurance Program set out in Exhibit "U" in performing the Work. Within forty-five (45) days of the Effective Date, Contractor shall provide by Notice to Owner a Quality Assurance Program that has fully integrated the requirements in Exhibit "A" and Exhibit "U" and that is prepared specifically for this Project ("Quality Assurance Program"). Owner shall have the right to review and comment on such program and if Owner provides Contractor with comments, then Contractor shall incorporate such changes into such program. If Owner fails to comment with fifteen days after receipt of such notice, Owner shall be deemed to have accepted such program. Contractor shall not perform any Work until and unless a quality assurance program applicable to such Work is either included in Exhibit "U" or included in the Quality Assurance Program delivered and accepted by Owner in accordance with this Section 4.17. Upon acceptance (or deemed acceptance) of such program by Owner, such program shall supersede and be deemed to replace the program attached as Exhibit "U" hereto. Notwithstanding Owner's review and approval of such program, Contractor shall remain solely responsible for performing the Work in accordance with this Contract.

4.18 Access. Contractor and its Subcontractors may access those parts of the Site identified in Exhibit "I" as being available to be accessed by Contractor for the performance of the Work on the date of the corresponding Owner Milestone as set forth on Exhibit "I", and any

such access by Contractor and its Subcontractors shall be in accordance with the terms of this Contract. In no event shall Contractor or any Subcontractor commence any Work upon any portion of the Site unless and until Owner issues a Notice to Contractor that such portion of the Site may be accessed by the Contractor to perform the Work, and then upon such issuance Contractor shall only be permitted to access those portions of the Site reasonably required to be accessed to perform the Work that is the subject of the applicable Notice, unless otherwise agreed in writing by Owner.

Contractor shall use only the entrance(s) to the Site as specified by Owner for ingress and egress of all personnel, equipment, vehicles and materials. .

Contractor shall not damage, close, or obstruct any highway, road, or other public or private easement, except to the extent allowed by Applicable Permits. If such facilities are closed, obstructed, damaged, or made unsafe by Contractor, Contractor shall, at its sole expense, make such repair as necessary and shall also provide such temporary guards, lights, and other signals as necessary or required for safety or as reasonably requested by Owner.

Owner shall have access to all existing facilities in case emergency repairs are necessary. Contractor shall not block or obstruct existing access routes to existing facilities.

Contractor has undertaken (or will be deemed to have undertaken) an independent determination of the Site and the access thereto and represents that the Site and the access thereto are satisfactory and sufficient for Contractor to perform the Work hereunder on the real estate encompassing such Site.. Contractor shall comply with the terms of any applicable Site Agreements. As of the Effective Date, Contractor represents and warrants that it has inspected and is fully familiar with the Site and the Land Rights Agreements (as listed in Exhibit "A", Section 18) and that the Site and access thereto are sufficient for Contractor to undertake and complete the Work. Contractor shall have the sole responsibility to obtain all construction permits, transportation permits, and other licenses, rights of way and other real property rights and easements necessary for Contractor to complete the Work that are not part of the Site, and any Owner assistance to Contractor in obtaining, or negotiation of, such rights shall be for Contractor's account and Owner may deduct such costs and expenses from any payment due to Contractor from Owner hereunder.

Contractor shall provide all necessary information and documents and use all reasonable efforts to assist Owner in obtaining any other real property rights that Owner at any time is seeking in connection with the Project. Contractor shall provide direct support, including but not limited to engineering drawings, expert testimony, supporting documents and affidavits, etc., to Owner's legal counsel in connection with any condemnation proceedings or any other legal action that may arise from the work performed. Contractor shall notify Owner upon the occurrence, or likely occurrence, of a dispute, conflict, confrontation, or other similar problem, or potential problem, involving one or more owners or occupiers of land so situated as to potentially result in a situation that may have a material adverse effect upon the performance of the Work. Contractor shall cooperate with Owner in resolving all such problems.

Contractor agrees to conduct and coordinate (if necessary) the performance of the Work by Contractor at the Site with the other construction contractors performing work at the Site. Contractor shall, prior to proceeding with any Work at the Site, give Notice to Owner of any issues that Contractor has determined would materially delay or affect Contractor's performance of the Work. Failure of the Contractor to provide such Notice shall constitute an acknowledgment and admission that Owner has provided reasonable access to the Site.

4.19 Documents at Site. Upon mobilization to the Site, Contractor shall maintain at the Contractor's primary field office at or near the Site for Owner one (1) record copy of the Contractor Deliverables, in good order and marked currently to record changes and selections made during the Work and, in addition, approved shop drawings, product data, samples and similar required submittals. These shall be available to Owner at all times. Upon completion of the Work, Contractor shall promptly furnish Owner with one (1) set of as-built drawings and complete copies of the shop drawings, product data, samples, operating manuals, parts books and other submittals required by the Contract.

4.20 Other Assistance. Until Final Completion, Contractor shall: (a) to the extent reasonably requested by Owner, assist Owner in dealing with Governmental Authorities and other Persons in any and all matters relating to the Work and/or the Project; and (b) cooperate to the extent reasonably necessary to enable Owner to perform its obligations under Owner's agreements with other Persons.

4.21 Data, Drawings and Manuals. Provide all operating data, preliminary or redline as-built drawings, manuals and other information necessary to safely and efficiently commission, test, operate, shut down, and maintain the Project (including those set forth in Exhibit "A"). Contractor shall maintain at the Site (in compliance with the maintenance requirements in Section 4.19) for Owner one (1) record copy of the Contractor Deliverables in good order and marked currently to record changes and selections made during the Work and, in addition, approved shop drawings, product data, samples and similar required submittals. These shall be kept on the Site and be available to Owner at all times.

4.22 Training. Contractor shall provide the training as described in Exhibit "A".

4.23 Announcements; Publications. Other than as may be required by Applicable Laws, Contractor shall not make any public announcements or issue any public publication about the Project without the prior written consent of the Owner.

4.24 Workers' Compensation. Contractor shall comply with all applicable statutory requirements of the state and/or federal regulations (e.g., FELA, USL&H, Jones Act) where the Work is to be performed ("Workers' Compensation Laws") and shall furnish proof thereof satisfactory to Owner prior to commencing Work.

4.25 Documents Requested. Provide such data, reports, certifications and other documents, including multiple hard copies of each and one electronic copy (unless another quantity is specified in the Contract), or assistance related to the Work or this Contract as may be reasonably requested by the Owner; provided, however, that the provision of this

information shall not in any manner modify Contractor's rights or obligations under any other provision of this Contract.

4.26 Critical Path Method Schedule. Attached in Exhibit "G" is a summary schedule (including all of the Critical Path Items and the Owner Milestones) (the "Summary Bid Schedule").

Within fourteen (14) days of the Effective Date, Contractor shall provide Owner with a detailed preliminary schedule for the first ninety (90) days after the Effective Date ("90 Day Schedule"). The preliminary schedule should be generally consistent with the Summary Bid Schedule and must satisfy the requirements of Exhibit G.

Within Ninety (90) days of the Effective Date the Contractor must provide a complete detailed critical path method schedule (the "Project Baseline Schedule") to be submitted to the Owner, for review. The Project Baseline Schedule must be consistent with the Summary Bid Schedule and the 90 Day Schedule, and satisfy the requirements set forth in Exhibit "G". Each of the Summary Bid Schedule, 90 Day Schedule and Project Baseline Schedule shall be subject to Owner's approval, not to be unreasonably withheld or delayed. The latest version of the critical path method schedule approved by Owner shall be deemed to be the Critical Path Method Schedule required under the Contract.

Such complete fully detailed Critical Path Method Schedule shall be the baseline schedule against which all updates shall be compared against and neither the Critical Path Items, the Contractor Schedule Milestones, nor the Owner Milestones may be revised except in accordance with Article 17. Contractor shall advise Owner of any delays to any Critical Path Items of more than fifteen (15) days and promptly provide Owner with the reasons for such delay. In connection therewith, Contractor shall employ a project management system able to provide schedule monitoring and analysis which shall include a comparison of the original Critical Path Method Schedule with the actual progress for each time period with all variances noted. If any of the Critical Path Items, Contractor Schedule Milestones, Owner Milestones, or Project Guaranteed Dates are adjusted pursuant to Article 17, the system shall also provide a comparison of the revised Critical Path Method Schedule with actual progress. Schedule analysis shall include a determination of the impact of such variance, if material, on the Contractor's ability to meet the Project Guaranteed Dates and Contractor Schedule Milestones and, if applicable, any action necessary to correct the variance.

Utilizing the critical path method, Contractor shall continually be aware of factors that are delaying or that could delay the achievement of a Contractor Schedule Milestone or Substantial Completion and shall take all commercially reasonable and prudent remedial actions within its control to eliminate or minimize schedule delays including overtime for the employees of Contractor and Subcontractors and the assignment of additional personnel and/or other resources. During construction, the Contractor will update its Critical Path Method Schedule to reflect the current status of the Work. At a minimum, the updates will be performed and provided to Owner on a monthly basis as part of the Project Progress Report.

4.27 Project Progress Report. Contractor shall prepare a monthly Project Progress Report following the format of Exhibit "A", Section 19 and submit it to Owner within ten (10) days after the end of each reporting period and as part of the Contractor's Invoice submitted pursuant to Section 7.1. In addition, Contractor shall keep, and furnish to Owner at Owner's request, such information as Owner may reasonably require to determine that the Work is progressing according to the Critical Path Method Schedule and for the purpose of confirming that Progress Payments are due hereunder, including, but not limited to monthly forecasting and accruals processes acceptable to Owner. Contractor also shall keep daily logs at the Site and shall provide to Owner copies of weekly reports of actual construction progress as compared with scheduled progress, which such weekly reports shall include at a minimum the information required for such weekly reports as described in Exhibit "A", Section 19 hereto.

4.28 Accident Reports. Provide Owner with written accident reports for accidents that occur at the Site, prepared in accordance with the Contractor Safety Program and the requirements of this Contract. Provide Owner with copies of all written communications with Governmental Authorities and insurance companies (including any notices) with respect to accidents that occur at the Site or the Contractor Yard Site or in connection with the performance of the Work, and thereafter provide such written reports relating thereto as Owner may reasonably request.

4.29 Punchlist. On a weekly basis after the Substantial Completion Date, revise and update the Punchlist and schedule and budget therefor as initially prepared in accordance with Section 15.1(e). After the Substantial Completion Date, Contractor shall complete each item of Work set forth on the Punchlist within the scheduled time period for such item as agreed to pursuant to Section 15.1(e).

4.30 Measurements. Exclusively use the U.S. Customary System units of measurement in all specifications, drawings, and other documents.

4.31 Meetings. Schedule and conduct periodic meetings with Owner in accordance with the requirements of Exhibit "A" before mobilization, at Contractor's office or such other location as the Parties may agree, and after mobilization, at the Site, or such other location as the Parties may agree, for the purpose of reviewing the progress of the Work and adherence to the Critical Path Method Schedule. The frequency of such meetings shall be in accordance with the frequency described in the Exhibits or as established and modified, from time to time, by mutual agreement of Owner and Contractor; provided, however, Owner shall be entitled to require that meetings occur as frequently as weekly. If Owner requests that Contractor cause a representative of any Subcontractor to attend any such meeting, then Contractor shall cause a representative of such Subcontractor to attend such meeting.

4.32 Parts. Contractor shall for its own account, provide all parts needed for construction, commissioning and testing of the Project. Contractor shall provide the spare parts identified in Exhibit "A", Section 21 ("Spare Parts") to be provided by Contractor and the cost of such Spare Parts is included in the Contract Price. Contractor shall also provide the pricing for the parts in accordance with the requirements set out in Exhibit "A", Section 21. In

addition, Contractor shall use reasonable efforts prior to ordering an item of Equipment to deliver to Owner reasonably in advance of placing such order a schedule describing any additional spare parts relating to such item of Equipment that the Contractor or Subcontractor reasonably suggests to be purchased with the Equipment along with the price for such part(s).

Contractor agrees that any part (whether provided by Contractor or Owner) that is incorporated into the Project by Contractor shall be covered under the Project Warranties and the other terms of the Contract, notwithstanding that such part may not have been provided or procured by Contractor.

4.33 Hazardous Materials.

- (a) Contractor's Obligations. Contractor shall comply with the obligations in Exhibit "A" with respect to Hazardous Materials.
- (b) Contractor's Responsibility. Contractor shall be responsible for all Losses arising from Hazardous Materials being delivered to, brought to or used at the Site or Contractor Yard Site by Contractor, Subcontractor or anyone employed by them, except those for which Owner is responsible pursuant to Section 3.6, including the costs of: (i) the permitting, storage, transportation, processing or disposal of Hazardous Materials, (ii) the remediation of any environmental condition caused by such Hazardous Materials, and (iii) any fines or penalties imposed by any Governmental Authority. Without limiting the generality of foregoing, Contractor shall be responsible for any Losses relating to the disposal, discharge, disturbance or release of Hazardous Materials at or in the vicinity of the Site or Contractor Yard Site by Contractor (or otherwise present at or in the vicinity of the Site) as a result of Contractor's or Subcontractor's negligence or failure to comply with the terms of this Contract.
- (c) Procedures Upon Discovery. If Contractor discovers, encounters or is notified of the existence of any Hazardous Materials at the Site (but excluding any Hazardous Materials brought to the Site by Contractor or a Subcontractor and being used by Contractor or a Subcontractor in compliance with Applicable Laws or any Hazardous Materials that are being stored at the Site by Owner in compliance with Applicable Laws), then:
 - (i) Contractor shall as promptly as reasonably possible cease all Work in any area affected thereby;
 - (ii) Contractor shall promptly give Notice to Owner thereof and cordon off or otherwise barricade the area containing such Hazardous Materials unless instructed otherwise by Owner; and
 - (iii) Contractor shall promptly provide Owner with such written reports relating thereto as Owner may reasonably request.

(d) Contractor's Right to a Change in Work. Contractor shall not be entitled to any extension of time, additional compensation or a Change in Work hereunder for any delay or costs incurred by Contractor as a result of the existence of Hazardous Materials for which Contractor is responsible pursuant to this Section 4.33. However, should Contractor encounter Hazardous Materials at the Site which are not Contractor's responsibility pursuant this Section 4.33, then Contractor shall be entitled to a Change in Work in accordance with Article 17.

4.34 Design of Project. Contractor shall further design and construct the Project so that it will allow operation of the Project and each of its component parts over the full range of operating and ambient conditions specified in Exhibit "A" while meeting Applicable Laws, Applicable Permits and Industry Standards.

All engineering work of the Contractor (or any Subcontractor) requiring certification shall be certified and all Drawings and Specifications requiring sealing shall be sealed in each case by a professional engineer licensed and properly qualified to perform such engineering services in the state in which such portion of the Work is performed and in all appropriate jurisdictions and such engineers and their qualifications shall be subject to Owner's review hereunder. Upon Owner's request, Contractor shall provide Owner with the resumes and other information regarding such Persons. Contractor shall use, and shall cause its Subcontractor to use, staff that are certified, professional engineers in the states in which the Work is to be performed in relation to all mechanical, electrical and civil engineering Work performed in the respective states.

4.35 Audit. Contractor shall keep such full and detailed records, books and other documentation in accordance with Industry Standards and with generally accepted accounting principles as may be necessary for substantiation of all Contractor claims for additional compensation or Changes in Work. Owner and its respective designees, shall be afforded access to, be allowed to inspect and audit, and be allowed to make copies of such books, records and documentation. Such books, records and documentation will be available in the United States at Contractor's regular place of business during normal working hours. Contractor shall preserve all such books, records and documentation for a period of seven (7) years after the Final Payment, or longer where required by Applicable Laws. These requirements shall also apply to all Subcontractors and materials suppliers. The audit rights provided herein shall apply to the full extent necessary to verify any cost-based components of Contractor's pricing, as well as any portion of the guaranteed fixed pricing that is subject to commodity pricing adjustments pursuant to Section 6.1.1.

4.36 Operation of Existing Facilities. Contractor specifically acknowledges and agrees that the Work must be performed by the Contractor within the operating parameters relating to the Transmission Grid as described in Exhibit "A". In addition, Contractor agrees that it shall plan and perform the Work in such a manner to prevent disruption to the operations of any generating facility and the Transmission Grid, unless otherwise expressly approved in writing by Owner. In the event of an emergency on the

Transmission Grid or during any period for which Contractor has rendered a portion of the Transmission Grid inoperable or impaired, within 24 hours' notice from Owner, Contractor shall remove such condition in order to render the Transmission Grid fully operable.

4.37 Delivery of Documents. Owner and Contractor agree that the timely submission to Owner by Contractor of certain engineering Contractor Deliverables is an important aspect of this Contract. In the event Contractor's failure to timely provide Contractor Deliverables in accordance with the Deliverables Schedule (as established in accordance with Section 12.4) results in Owner's failure to obtain an Owner Acquired Permit or otherwise fulfill its obligations to Contractor under this Contract, then Contractor shall not be entitled to a Change in Work as a result of such delay.

4.38 Site Conditions. Neither Owner nor any of its agents or representatives have made nor shall they make any express or implied warranty to Contractor as to the accuracy and completeness of any test, inspection, report or other information concerning the condition of the Site and Owner shall not be liable to Contractor for any such information provided by Owner or its agents or representatives.

Contractor specifically represents and warrants that it has carefully examined the Agreement and understands the Agreement and Contract Documents, including all Drawings, Scope of Work, Plans and Specifications, and special conditions, if any. Contractor further represents that it has inspected the sites and routes of the Work and is thoroughly acquainted with all conditions that may be encountered in performing the Work. Contractor has considered all matters and factors that could affect the Work, or the cost thereof, or the schedule to complete the Work. No claim for either additional compensation or extension of time alleging changed, concealed or unknown conditions will be allowed or recognized by Company. In relation to the Work and the project site, Contractor has taken into account all facets of the job including the required access.

Contractor has investigated (or will be deemed to have investigated) the Site and each other location where any portion of the Work shall be performed and surrounding locations, including both surface and subsurface conditions and has satisfied itself with respect to the nature and location of the Work and the general and local conditions in and around the Site with respect to the environment, transportation, access, waste disposal, handling and storage of materials, availability and quality of electric power, availability and quality of water, availability and quality of roads, climatic conditions and seasons, physical conditions at the Site and the surrounding area as a whole, topography and ground surface conditions, sound attenuation conditions, subsurface geology and conditions, nature and quantity of surface and subsurface materials to be encountered (excluding Hazardous Materials) but including equipment and facilities, and requirements of all Governmental Authorities with regard to flora, fauna and cultural conditions needed before and during performance of all Contractor's obligations under this Contract (the foregoing, collectively, the "Site Conditions").

In the event that Contractor performs any geotechnical studies, Contractor shall promptly provide Owner with a copy of such studies and/or reports.

Contractor specifically acknowledges and accepts the foregoing Site Conditions and agrees that no Project Guaranteed Date shall be extended, the Contract Price shall not be modified, and Contractor shall not be entitled to request or be granted any Change in Work, as a result of any such Site Conditions. Further, should the Site Conditions be at variance with the condition of the Site indicated by any reports or other information furnished to Contractor by Owner or any of its representatives (including, but not limited to any unknown physical conditions below the surface of the ground or water differing in any way from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract) neither the Contract Price nor any other Project Guaranteed Dates shall be adjusted, and Contractor shall complete the Work for the Contract Price.

4.39 Non-Conforming Work. If Contractor is notified of or discovers any Defect, Contractor shall, at Contractor's sole cost and expense, correct such Defect and promptly provide Notice to Owner that such corrective measures have been completed. If Contractor discovers a defect in Owner's Engineer's design or engineering, Contractor shall immediately provide Notice to Owner. Any disagreements about the root cause of any Defect shall be resolved in accordance with the provisions of Article 36.

4.40 [Joint and Several Liability.] [The Contractor means each joint venture partner which shall undertake the duties and obligations of the Contractor under this Contract. Each joint venture partner has the duty and obligation, individually, to fully perform all of the duties and obligations of Contractor under this Contract. Owner may enforce the terms of this Contract against one or more joint venture partners, individually or collectively, upon breach of Contractor's performance hereunder. Even though each joint venture partner has assumed the duties and obligations of Contractor under this Contract on a joint and several basis, the Contractor is referred to herein as if singular in number. Without limiting the generality of the foregoing, the Owner shall be entitled to conclusively rely on any Notice or other correspondence received, or performance tendered by a Joint Venture Partner (relating to or in connection with the Project or this Contract) or the Contractor without any duty on the part of Owner to make an inquiry into the authority of the Contractor or such Joint Venture Partner to give such Notice or other correspondence or tender such performance, and any Notice or correspondence delivered or performance taken by one of the Joint Venture Partners (relating to or in connection with the Project or this Contract) or the Contractor shall validly and legally bind the others.] [If applicable.]

5. WARRANTIES AND REPRESENTATIONS

5.1 Of Contractor. Contractor represents and warrants to Owner that:

5.1.1 Organization, Standing and Qualification. Contractor is a _____, duly organized, validly existing and in good standing under the laws of the State of _____, and has, or will have by the date it commences the applicable Work, full power and authority to engage in the business it presently conducts and contemplates conducting in accordance with all Applicable Laws, and is or will be duly licensed or qualified and in good standing under the laws of all states in which Work is to be performed and in each other jurisdiction wherein the nature of the business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder. Contractor shall furnish Owner with a certified copy of its permit to transact business in each state and other jurisdiction wherein the nature of the business transacted by Contractor makes such licensing or qualification necessary prior to commencing Work under the Contract. Owner may, at its option, withhold from any payment hereunder and remit to the relevant Governmental Authority such sums as are required by Applicable Laws and has provided Owner with a copy of such certificate. In addition, the Owner may, as required by Applicable Laws, withhold the Final Payment of the Contract as a guarantee that sales and use Tax will be paid in the event that Owner has been provided notice by a Governmental Authority pursuant to Applicable Laws to withhold funds. Contractor shall make such returns and pay such Tax on account of payments received under this Contract as Applicable Laws may require, and shall hold Owner harmless on account of its failure to withhold any amount required by Applicable Laws from any payment made hereunder or on account of Contractor's failure to pay any such Tax to a Governmental Authority.

5.1.2 Enforceable Contract. This Contract has been duly authorized, executed and delivered by Contractor and constitutes the legal, valid and binding obligation of Contractor, enforceable against Contractor in accordance with its terms.

5.1.3 Due Authorization. The execution, delivery, and performance by Contractor of this Contract will not violate or conflict with: (a) any Applicable Laws; (b) any covenant, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected; or (c) its organizational documents; and will not subject the Project or any component part thereof or the Site or any portion thereof to any lien other than as contemplated or permitted by this Contract.

5.1.4 Government Approvals. No authorization, approval, exemption, or consent of or by any Governmental Authority or other Person is required in connection with the authorization, execution, delivery, and performance of this Contract by Contractor. The Contractor Acquired Permits either have been obtained by Contractor and are in full force and effect on the Effective Date or will be obtained by Contractor and will be in full force and effect on or prior to the date on which they are required, under Applicable Laws, to be in full force and effect, so as to permit Contractor to commence and prosecute the Work to completion in accordance with the Critical Path Method Schedule.

5.1.5 No Suits, Proceedings. There are no actions, suits, proceedings, or investigations pending or, to Contractor's knowledge, threatened against it at law or in equity before any court (United States or otherwise) or before any Governmental Authority (whether or not covered by insurance) that individually or in the aggregate could result in any materially adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Contractor or in any impairment of its ability to perform its obligations under this Contract. Contractor has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any court or any Governmental Authority that may result in any such materially adverse effect or such impairment.

5.1.6 Patents. Other than those patents, trademarks, service marks, tradenames, copyrights, licenses, franchises and permits included in Owner Acquired Permits, Contractor owns or has the right to use all patents, trademarks, service marks, tradenames, copyrights, licenses, franchises, and permits necessary to perform the Work without conflict with the rights of others and to enable Owner to operate the Project without infringement thereof.

5.1.7 Business Ethics. Contractor, its employees, officers, agents, representatives and Subcontractors shall at all times maintain the highest ethical standards and avoid conflicts of interest in the performance of Contractor's obligations under this Contract. In conjunction with its performance of the Work, Contractor and its employees, officers, agents and representatives shall comply with, and cause its Subcontractors and their respective employees, officers, agents and representatives to comply with, all applicable laws, statutes, regulations and other requirements prohibiting bribery, corruption, kick-backs or similar unethical practices including, without limitation, the United States Foreign Corrupt Practices Act, the United Kingdom Bribery Act 2010, or any similar laws, statutes, regulations and other requirements prohibiting bribery, corruption, kick-backs or similar unethical practices and similar Applicable Laws. Without limiting the generality of the foregoing, Contractor specifically represents and warrants that neither Contractor nor any Subcontractor employees, officers, representatives or other agents of Contractor have made or will make any payment, or have given or will give anything of value, in either case to any government official (including any officer or employee of any governmental authority) to influence his, her, or its decision or to gain any other advantage for Owner or Contractor in connection with the Work to be performed hereunder. Contractor shall maintain and cause to be maintained effective accounting procedures and internal controls necessary to record all expenditures in connection with this Contract and to verify Contractor's compliance with this Article. Owner shall be permitted to audit such records as reasonably necessary to confirm Contractor's compliance with this Article. Contractor shall immediately provide notice to Owner of any facts, circumstances or allegations that constitute or might constitute a breach of this Article and shall cooperate with Owner's subsequent investigation of such matters. Contractor shall indemnify and hold Owner harmless from all fines, penalties, expenses or other losses

sustained by Owner as a result of Contractor's breach of this provision. The Parties specifically acknowledge that Contractor's failure to comply with the requirements of this Article shall constitute a condition of default under this Contract.

5.1.8 Owner-Provided Information. Owner or its agents may provide or may have provided Contractor or Subcontractor with copies of certain studies, reports or other information (including oral statements) and Contractor acknowledges that all such documents or information have been or will be provided as background information or as an accommodation to Contractor. Contractor further acknowledges that neither Owner nor any of its agents makes any representations or warranties with respect to the accuracy of such documents or the information (including oral statements) or opinions therein contained or expressed. Contractor further represents and warrants that it is not relying on Owner or Owner's agents for any information, data, inferences, conclusions, or other information with respect to Site Conditions, including the surface and sub-surface conditions of the Site and the surrounding areas.

5.1.9 Financial Condition. Contractor is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete its obligations under this Contract. Contractor is able to perform the Pre-Construction Services, furnish the Equipment, labor, and design services needed for the Project, is experienced in and competent to perform the Work, both construction and design, contemplated by this Contract, and is qualified to do the Work.

5.1.10 [Joint Venture.] [The Contractor is a joint venture and [each joint venture partner] have the power and authority to enter into this Contract. Each [joint venture partner] individually, has the duty and obligation to fully perform all of the duties and obligations of Contractor under this Contract. Any Notice or correspondence delivered or performance taken by one of either [joint venture partner] or the Contractor shall validly and legally bind the others on a joint and several basis.] [If applicable.]

5.1. **Of Owner.** Owner covenants, represents, and warrants to Contractor that:

5.2.1 Organization, Standing and Qualification. Owner is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Delaware, has full power to engage in the business Owner presently conducts and contemplates conducting, and is and will be duly licensed or qualified and in good standing in each jurisdiction wherein the nature of the business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder.

5.2.2 Enforceable Contract. This Contract has been duly authorized, executed and delivered by Owner and constitutes the legal, valid, and binding obligation of Owner, enforceable against Owner in accordance with its terms.

5.2.3 Due Authorization. The execution, delivery, and performance by Owner of this Contract will not conflict with: (a) any Applicable Laws; (b) any covenant, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected; or (c) its certificate of incorporation or by-laws.

5.2.4 Government Approvals. No authorization, approval, exemption, or consent of or by any Governmental Authority or other Person (other than the Applicable Permits) is required in connection with the execution, delivery, and performance of this Contract by Owner and if not obtained will be obtained by Owner prior to the date on which it is required under Applicable Laws to be in full force and effect. The Owner Acquired Permits either have been obtained by Owner and are in full force and effect on the Effective Date or will be obtained by Owner and will be in full force and effect on or prior to the date on which they are required, under Applicable Laws, to be in full force and effect; and in the event such Owner Acquired Permit is not obtained by the applicable Owner Milestone, Contractor's sole remedy for a breach of the representations in this Section 5.2.4 shall be a Change in Work in accordance with Article 17.

5.2.5 No Suits, Proceedings. There are no material actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court (United States or otherwise) or before any Governmental Authority (whether or not covered by insurance) that individually or in the aggregate could result in any materially adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Owner or in any impairment of its ability to perform its obligations under this Contract. Owner has no knowledge of any violation or default with respect to any order, writ, injunction, or any decree of any court or any Governmental Authority that may result in any such materially adverse effect or such impairment.

5.2.6 Business Practices. Owner will not, and Owner will direct its employees, agents, and subcontractors, and their employees and agents to not, make any payment or give anything of value to any government official (including any officer or employee of any Government Authority) to influence his, her, or its decision or to gain any other advantage for Owner or Contractor in connection with the Work to be performed hereunder. Neither Owner nor any of its employees or agents shall take any action that violates the United States Foreign Corrupt Practices Act or any similar Applicable Laws. Owner shall immediately give Notice to Contractor of any violation (or of the direction described in the first sentence hereof) and shall indemnify and hold Contractor harmless for all Losses arising out of such violation.

6. COST OF WORK

6.1 Contract Price. As full compensation for the Work, Owner shall pay to Contractor the fixed price amount of U.S. \$_____. (the "Contract Price"). The Contract Price shall be modified only by (i) a Change in Work approved in accordance with Article 17, or (ii) per Section 6.1(a).

The Contract Price shall be paid in accordance with Article 7.

6.2 All Items of Work Included. The Contract Price includes payment for: (a) all costs of Equipment, temporary equipment, materials, labor, transportation, engineering, design (if applicable) and other services relating to Contractor's performance of its obligations under this Contract and the Work (including any intellectual property rights licensed under this Contract, expressly or by implication) provided by Contractor or such Subcontractors; (b) any duties, levies, imposts, fees or charges of any kind (whether in the United States or elsewhere and including any of the foregoing related to the importation of any items into the United States) arising out of Contractor's or any such Subcontractor's performance of the Work; and (c) any duties, levies, imposts, fees, royalties or charges of any kind (whether in the United States or elsewhere and including any of the foregoing related to the importation of any items into the United States) imposed on Contractor or its Subcontractors with respect to any Equipment, materials, labor, or services provided under this Contract.

6.3 Taxes; Tax Administration and Payment.

(a) Responsibility for Taxes. The Contract Price includes payment for all taxes of any nature whatsoever including all: (i) United States federal, state, regional, and local taxes, national and foreign taxes, goods and services taxes, personal property taxes, sales and use taxes (including sales and use tax on the purchase, sale or use of all materials, supplies, Equipment and machinery); (ii) property taxes on all materials, supplies, equipment and machinery not intended to be transferred to Owner hereunder; (iii) occupational, excise, unemployment, value-added, gross receipts and income taxes; and (iv) any and all other taxes, effective or enacted as of the Effective Date or thereafter, each as imposed on Contractor or its Subcontractors or the Work (collectively referred to as "Taxes"); provided, however, the Contract Price shall not include any real property taxes on the Site or the Project, which shall be borne by Owner. With the exception of real property taxes not included in the Contract Price as described above in this paragraph, the Contract Price shall not be increased with respect to any of the foregoing Taxes or with respect to any withholdings in respect of any of the foregoing Taxes that Owner may be required to make. Calculation of Tax within the Contract Price is the sole responsibility of the Contractor and is provided for

informational purposes only. Any errors or omissions in calculating Tax shall be at the Contractor's risk.

(b) Tax Administration and Payment. Contractor shall, in accordance with Applicable Laws, timely administer and timely pay all Taxes that are included in the Contract Price and timely furnish to the appropriate taxing authorities all required information and reports in connection with such Taxes. Contractor shall provide to Owner information to confirm the correct Taxes have been paid on the Work by the Contractor and such further Tax information reasonably requested by Owner.

7. TERMS OF PAYMENT

Payments to Contractor shall be made as follows:

7.1. Contractor's Invoices.

- (a) Following the issuance of a Limited or Full Notice to Proceed, on or about the tenth (10th) day of each month, Contractor shall submit a Contractor's Invoice in the form of Exhibit "F" to Owner for the Progress Payment Amount in accordance with the requirements and provisions set forth in Exhibit "D". Owner shall pay undisputed amounts so invoiced within thirty (30) days.

In all cases, Contractor specifically agrees that it shall not request in any Contractor's Invoice the payment of any sum attributable to Work which has been rejected by Owner or Contractor or which otherwise constitutes or relates to a Subcontractor's application for payment, billings or invoices which Contractor disputes or for any other reason does not intend to pay in accordance with the terms of Contractor's agreements with its Subcontractors. Subject to the provisions of this Article 7, Owner shall pay Contractor each Progress Payment described on the Progress Payment Schedule upon Contractor's completion of the corresponding discrete portion of Work.

7.2. Certification by Contractor. Each Contractor's Invoice:

- (a) Shall provide documentary evidence in the form of a written progress report, in accordance with Section 4.27 to describe: (i) the completion of the Work to maintain the Interim Progress Milestones; (ii) the related Progress Payment Schedule and Amounts set forth on the Progress Payment Schedule that are then due as of the end of the immediately preceding month; and (iii) any other amounts then payable by Owner to Contractor under Article 17 or any other provision hereof and, without limiting Owner's right to dispute any amounts requested for payment;
- (b) Shall include Contractor's Partial Release and Waiver of Liens and Claims; and;
- (c) Shall include the Project Progress Report and Critical Path Method Schedule in accordance with Section 4.26 and Section 4.27, except to the extent they have previously been provided for the applicable month;

It being understood and agreed by Contractor that any Contractor's Invoice not in compliance with the Project Payment Schedule or that has been demonstrated to not be in compliance with the Interim Progress Milestones described in Exhibit "G", and in Exhibit "G" Attachment G.1.1 shall not, to the extent of such deficiency, constitute

a valid request for payment. Each Progress Payment Amount shall be due and payable only to the extent it is supported by documentary evidence of compliance with the Interim Progress Milestones set forth in Exhibit "G" Attachment G.1.1, it being acknowledged and understood that no Progress Payment shall be made for any partially or improperly completed individual items of Work or for Work that remains subject to Owner's review and inspection rights in accordance with Section 12.5.

Notwithstanding the foregoing, in no event shall the cumulative amount actually paid with respect to any period of time exceed the maximum cumulative amount payable for such period in accordance with the Progress Payment Schedule.

7.3 Subcontractor Statements. Accompanying each Contractor's Invoice, Contractor shall submit a Partial Release and Waiver of Liens and Claims from each Major Subcontractor whose Work is covered under such Contractor's Invoice.

7.4 Owner Review; Payments. Without limiting Owner's rights of review under Article 10 and Article 12, within fourteen (14) days after receipt by Owner of a Contractor's Invoice and all accompanying documentation required by Section 7.2, Owner shall: (a) determine whether the Interim Progress Milestones described in Exhibit G Attachment G.1.1 remain valid and not subject to the provisions of Section 8.3; (b) determine whether the Work performed conforms with the requirements of this Contract; (c) determine whether the Contractor's Invoice has been properly submitted; and (d) determine and give Notice to Contractor concerning any invoiced amount that is in dispute and the basis for such dispute. Owner will pay Contractor, within thirty (30) days after receipt by Owner of Contractor's Invoice, all Progress Payment Amounts and other amounts then payable and not in dispute. Failure by Owner to pay any amount in dispute and identified pursuant to clause (d) above until resolution of such dispute pursuant to Section 7.7 shall not alleviate, diminish, or modify in any respect Contractor's obligations to perform the Work in accordance with this Contract. Contractor shall promptly pay each Subcontractor directly contracting with Contractor the amount to which said Subcontractor is entitled under its agreement with Contractor with respect to the Work covered by such payment by Owner in accordance with the terms of its subcontract with such Subcontractor. Contractor shall, by an appropriate agreement with each Major Subcontractor, contractually require each such Subcontractor to make payments to its subcontractors in a similar manner.

7.5 Retainage. Owner shall retain and withhold payment of ten (10%) of all payments made to Contractor pursuant to Section 7.4 (the "Retainage") other than the Final Payment. Such amount shall be held by Owner and any interest thereon shall accrue for the account of Owner and not Contractor. Alternatively and in lieu of the above, no Retainage will be withheld by Owner provided Contractor posts an irrevocable transferable letter of credit issued for the benefit of the Owner by a Qualified Bank (the "Retainage LOC") not less than an amount equal to the Retainage (had it been withheld by Owner in accordance with the first paragraph of this Section 7.5).

7.6 Final Payment. Upon the delivery of Owner's Certificate of Final Completion in accordance with Section 15.5(l), Contractor shall submit a final Contractor's Invoice (the

“Final Contractor’s Invoice”) which shall set forth all amounts due to Contractor that remain unpaid (including amounts relating to the Punchlist Items), and upon approval thereof by Owner, Owner shall pay to Contractor the amount due under such Final Contractor’s Invoice (“Final Payment”). Subject to achievement of Final Completion pursuant to this Contract, Final Payment shall include release of the Retainage or return and cancellation of the Retaining LOC (as applicable). Owner shall have no obligation to make Final Payment until Contractor shall have delivered the following items to Owner:

- (a) With respect to each Major Subcontractor the Final Release and Waiver of Liens and; and
- (b) With respect to Contractor,
 - (i) A certification to the effect that:
 - (x) Contractor has been paid all amounts owing or that may become owing to Contractor with respect to the Project and the performance of the Work except for amounts requested in the Final Contractor’s Invoice, and
 - (y) Contractor has paid all amounts that Contractor will be required to pay in connection with the performance of the Work, including all amounts to be paid to any Subcontractor with respect to the Project and the performance of the Work, except for amounts that in the aggregate shall be less than the Final Payment;
 - (ii) The Final Release and Waiver of Liens and Claims; and
 - (iii) The Warranty LOC.

7.7 Disputes. Contractor’s acceptance of any payment shall not be deemed to constitute a waiver of amounts that are then in dispute. Contractor and Owner shall use their reasonable efforts to resolve all disputed amounts as expeditiously as possible in accordance with the provisions of Article 36.

7.8 Method of Payment. All payments to be made to Contractor under this Contract shall be paid in Dollars and shall be paid by electronic funds transfer in immediately available funds on the date due or, if such date is not a Business Day, on the immediately succeeding Business Day to the account as may be designated by Contractor from time to time by Notice to Owner in accordance with Article 33.

7.9 Holdbacks. Any provision hereof to the contrary notwithstanding, upon the occurrence and continuance of any of the following events, Owner, upon Notice to Contractor, may (but shall have no obligation to) withhold or retain such portion of any payment due to Contractor under this Contract to the extent reasonably necessary to ensure the performance of the Work, to cover Owner’s reasonable costs to cover such event or otherwise protect fully Owner’s rights hereunder:

- (a) A Contractor Event of Default shall have occurred hereunder as defined in Section 20.1;
- (b) Any part of such payment shall be attributable to Work which shall contain a Defect or shall not have been performed in accordance with the terms of this Contract;
- (c) Contractor shall have improperly failed to make prompt payments to its Subcontractors pursuant to the terms of such subcontract for material or labor used in the Work for which Owner has paid Contractor;
- (d) Owner in good faith shall have determined based upon the Critical Path Method Schedule that Contractor cannot with prompt and reasonable acceleration of the Work achieve the Project Guaranteed Dates; provided, however, that the amount withheld or retained on account of this Section 7.9(d) shall not exceed the amount of the Delay Liquidated Damages which would be payable under Article 16 on account of the then estimated delay in achieving the Project Guaranteed Dates;
- (e) Contractor shall have failed to deliver a Schedule Recovery Plan reasonably acceptable to Owner as set forth in Section 8.3, or Contractor shall have failed to cause the prosecution of the Work to conform to the Schedule Recovery Plan approved by Owner; or
- (f) Contractor shall have failed to deliver any Contractor Deliverable (prepared by Contractor in good faith) to Owner on or before the date set forth on the Deliverables Schedule for the delivery of such Contractor Deliverable.

No payment made hereunder shall be construed to be acceptance or approval of that part of the Work to which such payment relates or to relieve Contractor of any of its obligations hereunder. Should any dispute arise with respect to Owner's exercise of its rights under this Section 7.9, such dispute shall be subject to resolution in accordance with the expedited payment dispute procedures provided in Article 36. Notwithstanding the provisions of Section 20.4 and Article 36, Contractor shall not have any rights of termination or suspension under Section 20.4 as a result of Owner's exercise or attempted exercise of its rights under this Section 7.9.

7.10 Application of Monies. Contractor shall use the sums paid to it pursuant to this Article 7 for the purpose of performing the Work and designing, furnishing, equipping, testing and commissioning the Project in accordance with this Contract. No provision hereof shall be construed, however, to require Owner to see to the proper disposition or application of the monies so paid to Contractor.

7.11 Release of Liability. Acceptance by Contractor of the Final Payment shall constitute a release by Contractor of Owner, its Affiliates and every officer and agent thereof from all liens (whether statutory or otherwise and including mechanics' or suppliers' liens), claims and liability with respect to the payment of the Contract Price or any event or

circumstance that would entitle Contractor to request a Change in Work in accordance with Article 17 in respect of any Work performed or furnished in connection with this Contract, or for any act or omission of Owner or of any Person relating to or affecting Owner's payment obligations under this Contract, except for unresolved claims for which Contractor has previously delivered a dispute Notice to Owner and claims which are based on facts and/or circumstances that arise only after Final Completion; and further provided that such acceptance shall not constitute a release of Contractor's right to enforce any provision of this Contract that survives termination of this Contract in accordance with Section 37.3. No payment by Owner shall be deemed a waiver by Owner of any obligation of Contractor under this Contract.

7.12 All Payments in Dollars. All amounts in this Contract are expressed in, and all payments required hereunder shall be paid in United States Dollars.

8. COMMENCEMENT AND PROSECUTION OF THE WORK

8.1. Limited Notices.

- (a) Limited Notice to Proceed. Owner may issue to the Contractor a Limited Notice to Proceed to perform specified Work as required within Exhibit "A" and shall pay Contractor in accordance with the terms of Exhibit "D" that are applicable

Prior to the Full Notice to Proceed Date, Contractor shall only perform the activities set forth in a Limited Notice to Proceed. Contractor shall not be entitled to any payment for activities, services, products or other costs or expenses incurred outside of the scope set forth in the Limited Notice to Proceed. Amendments to a Limited Notice to Proceed shall be made in accordance with the provisions of Article 17, *mutatis mutandis*. Owner may terminate a Limited Notice to Proceed at any time, provided that any such termination shall not terminate this Contract nor shall it affect the other rights, obligations or agreements of the Parties set forth in this Contract. Owner shall pay Contractor for the value of agreed services completed (or if not completed, the reasonable approximation of the portion that has been completed) as of the date of termination of a Limited Notice to Proceed.

8.2 Full Notice to Proceed. Owner shall provide Contractor with Notice that Contractor is directed to commence Work under this Agreement ("Full Notice to Proceed") as follows:

- (b) (a) Owner shall inform Contractor of the date Owner reasonably anticipates to issue Full Notice to Proceed, and the date on which Owner provides Contractor with Full Notice to Proceed shall be the Full Notice to Proceed

Date; On the Full Notice to Proceed Date, Contractor shall commence and shall thereafter diligently pursue the applicable Work in accordance with the terms of this Contract. Contractor expressly agrees that the period of time specified to complete all Work and the timely achievement of the Project Guaranteed Dates includes an appropriate allowance for all hindrances and delays incidental to the Work and no claim shall be made by Contractor for hindrances or delays for any cause during the progress of the Work, except as provided under Article 9 and Article 17.

(c) Contractor shall prosecute the Work in accordance with the Critical Path Method Schedule. Contractor shall cause Mechanical Completion, Substantial Completion and Final Completion to occur on or before the applicable Project Guaranteed Dates (as such dates may be extended pursuant to Article 17 or Article 22).

8.3 Schedule Recovery Plan. If Contractor fails, other than by reasons not attributable to Contractor, to stay within thirty (30) days of the schedule (as determined using the Critical Path Method Schedule) for achieving the applicable Project Guaranteed Dates, then Contractor shall, within five (5) days after Contractor becomes aware of such delay, submit for approval by Owner, a written plan (the "Schedule Recovery Plan") to complete all necessary Work to achieve such Project Guaranteed Dates not later than thirty (30) days after the applicable Project Guaranteed Dates, including a revised Critical Path Method Schedule. Within five (5) days after receipt of the proposed Schedule Recovery Plan, Owner shall deliver written approval or disapproval of such plan to Contractor. If Owner disapproves the proposed Schedule Recovery Plan and provides comments to the Schedule Recovery Plan, Contractor shall resubmit a revised Schedule Recovery Plan addressing such Owner comments within five (5) additional days. Review and/or approval by Owner of a Schedule Recovery Plan shall not be deemed in any way to have relieved Contractor of its obligations under this Contract relating to the failure to achieve Substantial Completion or Final Completion by the applicable Project Guaranteed Date, be a basis for an increase in the Contract Price, or limit the rights of Owner under Section 16.1.

8.4 Interim Progress Milestones Recovery Plan. If the provisions of Section 8.3 are invoked then the Contractor shall provide to the Owner, with the required recovery schedule a revised Exhibit "G", Attachment G.1.1 "Interim Progress Milestones" and Exhibit "D", "Attachment 1", "Progress Payment Schedule" in conjunction with the submittal requirements of Section 8.3. The Owner shall review, approve, reject or comment such submittals in a manner consistent with the terms of Section 8.3.

9. FORCE MAJEURE.

9.1 Events of Force Majeure. No failure or omission to carry out or observe any of the terms, provisions, or conditions of this Contract shall give rise to any claim by any Party against any other Party hereto, or be deemed to be a breach or default of this Contract if

such failure or omission shall be caused by or arise out of an event of Force Majeure. No obligations of either Party that were required to be performed before the occurrence of an event of Force Majeure causing the suspension of performance shall be excused as a result of such occurrence. The obligation to pay money in a timely manner shall not be subject to the Force Majeure provisions.

9.2 Notice. If either Party's ability to perform its obligations under this Contract is affected by an event of Force Majeure, such Party shall promptly as reasonably possible, upon learning of such event and ascertaining that it will delay its performance hereunder (but in any event within two (2) Business Days after such Party becomes aware of such delay), give Notice to the other Party (a "Delay Notice") stating the nature of the event, its anticipated duration and effect upon the performance of such Party's obligations, and any action being taken to avoid or minimize its effect. The burden of proof shall be on the Party claiming to be affected pursuant to this Section 9.2.

9.3 Scope of Suspension; Duty to Mitigate. The suspension of performance due to an event of Force Majeure shall be of no greater scope and no longer duration than is required by such event and the effects of such event. The excused Party shall use its reasonable efforts to: (a) mitigate the duration of, and costs arising from, any suspension or delay in the performance; (b) continue to perform its obligations hereunder to the extent unaffected by the Force Majeure event; and (c) remedy its inability to perform. When the affected Party is able to resume performance of its obligation under this Contract, such affected Party shall give the other Party Notice to that effect.

9.4 Removal of Force Majeure. If, within a reasonable time after an event of Force Majeure that has caused Contractor to suspend or delay performance of the Work, action to be undertaken at the expense of Owner has been identified and recommended to Contractor, and Contractor has failed within ten (10) days after receipt of Notice thereof from Owner to commence to take such action as Contractor could lawfully and reasonably initiate to remove or relieve either the Force Majeure event or its direct or indirect effects, Owner may, in its sole discretion and after Notice to Contractor, initiate such reasonable measures as will be designed to remove or relieve such Force Majeure event or its direct or indirect effects and, after such removal or relief has been accomplished, require Contractor to resume full or partial performance of the Work. To the extent Contractor's failure to take such measures results in additional expense in addition to what Owner would have paid to Contractor, had Contractor taken such measures, such additional expense shall be for Contractor's account.

9.5 Responsibility of Contractor. Damages or injuries to Persons or properties resulting from an event of Force Majeure during the performance of the obligations provided for in this Contract shall not relieve the Contractor of the responsibility to bear the cost of the damage or injuries caused by Contractor's negligence or misconduct to the extent such costs are not covered by the insurance described in Article 23.

9.6 Contractor's Remedy. Contractor's sole remedy for the occurrence of an event of Force Majeure shall be an extension of time as determined in accordance with Article 17.

Contractor shall not suspend the Work unaffected by Force Majeure pending resolution of the agreement on the extension of time under this Article 17 unless directed by Owner in writing in accordance with Article 22.

10. SUBCONTRACTORS

10.1 Use of Subcontractors; Owner's Right to Object. The Persons (including, where applicable, specific plant locations utilized by such Persons) identified in Exhibit "A" have been pre-approved by Owner for use by Contractor as a Subcontractor for the particular materials, equipment or services as specified in Exhibit "A", and are not subject to the requirements of this Section 10.1. In the event Contractor desires to use a substitute for any of the Persons (including, where applicable, specific plant locations utilized by such Persons) listed in Exhibit "A", (including if such Person is not a Major Subcontractor) then Contractor shall follow the procedures set forth in Exhibit "A".

Contractor shall follow the procedure set forth in this Section 10.1 with respect to obtaining Owner approval of Major Subcontractors that are not otherwise subject to the procedures set forth in Exhibit "A". Within fifteen days (15) of the Effective Date, Contractor shall provide Owner with a list of all anticipated potential Major Subcontractors. Within fifteen (15) Business Days after receipt of such list, Owner shall have the right to advise Contractor of any such potential Major Subcontractor to which it reasonably objects, together with the reasons for such objection. Contractor shall remove from the list any potential Major Subcontractor to which Owner reasonably objects. Owner shall be deemed not to have objected to any potential Major Subcontractor on the list to which Owner does not object within such fifteen (15) Business Day period. Contractor shall have the right to add potential Major Subcontractors to the list subject to the procedures set forth above. Other than for the Persons approved in accordance with Exhibit "A", no Subcontractor for any Equipment, material, component or service in connection with the Work covered by this Section 10.1 shall be engaged by Contractor prior to completion of the review process set forth in this Section 10.1.

10.2 No Approvals; Contractor Responsible for Work. Neither the use by Contractor of any Subcontractors nor the review or failure to object by Owner of any Subcontractor under this Article 10 shall: (a) constitute any approval of the Work undertaken by any such Person; (b) cause Owner to have any responsibility for the actions, the Work, or payment of such Person or to be deemed to be in a contractual or an employer-employee relationship with any such Person; or (c) in any way relieve Contractor of its responsibilities and obligations under this Contract. Contractor shall be responsible for any Work performed by a Subcontractor. In no event shall any act or omission by any Subcontractor constitute an event of Force Majeure except to the extent caused by an event or circumstance that itself constituted an event of Force Majeure. Notwithstanding anything in Article 7 to the contrary, in no event shall Contractor submit or Owner be obligated to review any Contractor's Invoice with respect to work performed by any Major Subcontractor prior to the expiration of the review period provided in Section 10.1.

10.3 Assignment. Each subcontract and purchase order entered into by Contractor with respect to the Work with a Major Subcontractor shall contain a provision in the form of Exhibit "P" consenting to assignment to Owner in the case of a Contractor default.

10.4 Information; Access. Contractor shall furnish such information and access relative to its Subcontractors as Owner may reasonably request. Contractor shall promptly provide Owner with all recall notices, defect notices or other product communications from the Vendors and/or shall require that its Vendors send such notices and communications directly to the Owner.

11. LABOR RELATIONS

11.1 General Management of Employees. Subject to Section 4.16, and notwithstanding the provisions of Section 11.2, Contractor shall retain its rights to exercise and shall exercise its management rights in performing the Work. Such management rights shall include the rights to hire, discharge, promote, and transfer employees; to select and remove foremen or other Persons at other levels of supervision; to establish and enforce reasonable standards of production; to introduce, to the extent feasible, labor saving equipment and materials; to determine the number of craftsmen necessary to perform a task, job, or project; and to establish, maintain, and enforce rules and regulations conducive to safe, efficient and productive operations. Contractor shall plan and conduct its operations so that its employees and Subcontractors of any tier will work harmoniously with Owner's employees and other workers employed on the same or related projects to assure that there will be no delays, work stoppages, excessive labor costs, or other labor difficulties. Contractor shall enforce strict discipline and good order among Contractor's employees and Subcontractors' employees. Contractor shall not permit the employment of any unfit individual or individuals not skilled in the tasks assigned to them.

11.2 Labor Disputes. Contractor shall use, and shall cause each Subcontractor to use, reasonable efforts to minimize the risk of labor related delays or disruption of the progress of the Work. Contractor shall promptly take, and shall cause each Subcontractor to take, any and all reasonable steps that may be available to resolve violations of collective bargaining agreements or labor jurisdictional disputes, including the filing of appropriate processes with any court or administrative agency having jurisdiction to settle, enjoin, or award damages resulting from violations of collective bargaining agreements or labor jurisdictional disputes. Contractor shall advise Owner promptly, in writing, of any actual or threatened labor dispute of which Contractor has knowledge that might materially affect the performance of the Work by Contractor or by any Subcontractors. Notwithstanding the foregoing, the settlement of strikes, walkouts, lockouts or other labor disputes shall be at the discretion of the Party having the difficulty.

11.3 Personnel Documents. Contractor shall ensure that all its personnel and personnel of any Subcontractors performing the Work are, and at all times shall be, in possession of all such documents (including visas, driver's licenses and work permits) as may be required by any and all Applicable Laws.

12. **INSPECTION; EFFECT OF REVIEW AND COMMENT**

12.1 Inspection and Uncovering Work. Owner shall have the right, but not the obligation, to observe the Work and to inspect any item of Equipment or material, design, engineering, service, workmanship or any other portion of the Work to be provided hereunder, and Contractor shall make available for review by Owner, and provide to Owner if requested by Owner, all design criteria, system descriptions, Equipment specifications, Drawings and Specifications, design calculations, quality assurance reports, design drawings, shop drawings, Required Manuals, other Contractor Deliverables and other documents relating to the Work as required by this Contract. Owner shall be responsible for all of Owner's (and its representatives') costs and expenses with respect to such inspections.

Contractor shall submit to the Owner a detailed Inspection and Test Plan ("ITP") for each material piece of Equipment within ten (10) days after award of such Equipment purchase agreement and for all material Work to be performed within thirty (30) days of the Effective Date which such ITP is to include the inspections and testing requirements as provided in Exhibit "A". The ITP shall include pertinent Vendor manufacturing and construction inspection operations and plans. Owner shall identify to Contractor the Equipment or portions of Work Owner desires to be hold points so that Owner can inspect or witness consistent with the ITP and the Critical Path Method Schedule before such Work can be released for further manufacture, shipment and/or construction. Contractor shall provide Owner with reasonable notice of any such hold points which shall be not less than five (5) Business Days for manufacture and shipment related inspections and not less than three (3) Business Days with respect to on-Site construction-related inspections. If any portion of the Work so identified by Owner is completed and/or covered without Contractor having given Owner the opportunity to inspect such Work consistent with the ITP, Owner shall have the right to have such portion of the Work uncovered or dismantled for inspection. The cost and schedule impact of such uncovering and recovering (or dismantling and reconstruction) shall be borne by Contractor whether the Work is found to be in conformance or nonconformance with this Contract.

In the event Contractor has provided Owner an opportunity to inspect in accordance with the prior paragraph and Owner did not exercise its right to so inspect, or in the event Contractor was not required in accordance with the prior paragraph to provide Owner with an opportunity to inspect, then in either event, Owner shall have the right to have any portion of the Work uncovered or dismantled for inspection upon Notice to Contractor. The cost and schedule impact of such uncovering and recovering (or dismantling and reconstruction) shall be borne by Contractor if the Work contains a

Defect; and if the Work is found not to contain a Defect, Contractor shall be entitled to a Change in Work in accordance with Article 17.

12.2 Right to Reject Work. Regardless of whether payment has been made therefor, Owner shall have the right to reject any portion of the Work that contains any Defect. Upon such rejection, Contractor shall promptly remedy, at its sole cost and expense, any Defect that is identified by Owner as giving rise to such rejection.

12.3 General Inspection Rights. Contractor agrees that Owner and its representatives may observe and inspect the Work, any item of Equipment (including Equipment under fabrication), material, service, or workmanship to be provided hereunder and to observe all tests of the Work and the Project (including factory or other tests performed at a location other than the Site). Upon reasonable Notice to Contractor by Owner, Contractor shall allow Owner and its representative's reasonable access to the Work (including Equipment under fabrication) and the Project. Owner also shall be entitled to review all Contractor's Drawings and Specifications or technical details pertaining thereto as reasonably requested by Owner or its representatives. Contractor shall incorporate the review and inspection rights set forth in this Article 12 in all Equipment purchase orders and subcontracts. To facilitate such observations and inspections, Contractor shall maintain at the Site a complete set of all Drawings and Specifications and current Critical Path Method Schedule.

12.4 Deliverables Schedule. Attached as part of Exhibit "H" is an initial deliverables schedule. Within sixty (60) days after the Effective Date, Contractor shall provide a Notice to Owner attaching a schedule identifying all Contractor Deliverables to be delivered to Owner, the deadline for delivery thereof, and Owner's time period for review and comment (in accordance with Section 12.5) with respect thereto, and as updated and revised as required herein (the "Deliverables Schedule") which such schedule shall comply with the requirements set forth in Exhibit "H" and incorporate the initial schedule attached in Exhibit "H". The Deliverables Schedule shall include the Contractor Deliverables and documents (and include the time periods for Owner's or a third party's review) as set forth in Exhibit "A". Thereafter, Contractor shall at least on a monthly basis provide Notice to Owner attaching an updated schedule identifying Contractor Deliverables to be delivered to Owner, the deadline for delivery and Owner's time period for review and comment with respect thereto. Owner shall have the right to promptly review and comment on such Deliverables Schedule. If Owner provides any comments with respect to the Deliverables Schedule to Contractor, then Contractor shall incorporate changes into such Deliverables Schedule addressing such comments, and resubmit the same to Owner. Such incorporation of changes to address Owner's reasonable comments shall not be considered a Change in Work. If Owner fails to comment within ten (10) Business Days after receipt of such Notice, Owner shall be deemed to have accepted the Deliverables Schedule.

The Deliverables Schedule shall provide an Owner's review period of adequate length of time to permit a complete review by Owner based on the nature and extent of items involved and the volume and content of other Contractor Deliverables submitted to

Owner during the same period. The Owner review time periods shall be consistent with those set forth in Exhibit "A".

12.5 Owner Review of Documents. Contractor shall submit for review to Owner Contractor Deliverables in accordance with the requirements of Exhibit "A", including the Deliverables Schedule and Exhibit "H". Contractor shall ensure that all such items undergo a comprehensive independent in-house review and approval process before submission of such items to Owner. After receipt of any Contractor Deliverable, Owner shall have the right, during the time period of fifteen (15) Business Days from the receipt by Owner of such applicable Contractor Deliverable (except to the extent that a different review period is specifically provided for in Exhibit "H") to describe any Defects in the design or other Work identified in such Contractor Deliverable. Notwithstanding anything in Article 7 to the contrary, in no event shall Contractor submit any Contractor's Invoice with respect to Work performed pursuant to any such Contractor Deliverables prior to the expiration of the review period set forth in this Section 12.5. Issuance by Contractor of any purchase orders prior to Owner completing its review shall be at Contractor's own risk.

12.6 Remedy of Defect – Contractor Deliverables. If Owner identifies any Defect in the design with respect to any Contractor Deliverables submitted for review, then Contractor shall incorporate changes into such Contractor Deliverables addressing and remedying the Defect and resubmit the same to Owner, and such incorporation of changes to address Owner's comments shall not be considered a Change in Work. No Contractor Deliverable subject to this Section 12.6 shall be released for use in connection with the Work prior to completion of the review process set forth in Section 12.5.

12.7 Limitation on Owner's Obligations. Inspection, review, acknowledgement, acceptance, approval or comment by Owner or any of its representatives, with respect to any subcontract or purchase order or any Drawings and Specifications, Contractor Deliverables, samples, and other documents, or any other Work or services performed by Contractor or any Subcontractor, is solely at the discretion of Owner and shall not in any way affect or reduce Contractor's obligations to complete the Work in accordance with the provisions of this Contract or be deemed to be a warranty or acceptance by Owner with respect to such Work.

13. FOUNDATION COMPLETION AND PROJECT MECHANICAL COMPLETION OF THE WORK

13.1 Foundation Completion. Contractor shall achieve Foundation Completion with respect to each individual foundation that is part of the Work. Foundation Completion with respect to an individual foundation means the achievement of the following milestones:

- (a) Such foundation is mechanically completed and installed in accordance with the Scope of Work;

- (b) Such foundation is structurally complete and contains all necessary embedded inserts;
- (c) The concrete portion of such foundation has cured so as to have achieved the minimum strength necessary to allow assembly, erection and installation of the tower thereon;
- (d) Backfilling of the area surrounding such foundation has been completed;
- (e) All of the crane hardstandings and tower erection lay-down and work areas have been completed in accordance with the construction plan approved under this Contract;
- (f) Contractor has provided sketches of each foundation and the tower (both above-ground and below-ground in the immediately surrounding area);
- (g) Embedded grounding material has been installed and ground grid analysis has been completed;
- (h) All coatings and grout required pursuant to Exhibit "A" have been installed; and
- (i) Owner has accepted or is deemed to have accepted a Foundation Completion Certificate with respect to such Work pursuant to Section 13.3.

13.2 Project Mechanical Completion. The following are conditions precedent to Project Mechanical Completion:

- (a) Contractor shall have achieved Foundation Completion for each foundation that is part of the Project;
- (b) The Project and each sub-system of the Project, in each case to the extent required for commissioning, initial operation, adjustment and testing is mechanically, electrically, and structurally constructed in accordance with the requirements of this Contract, the Scope of Work and Industry Standards, including completion of the Mechanical Completion Tests in accordance with the Mechanical Completion Test Procedures;
- (c) The Project and each sub-system of the Project may be commissioned and operated without damage to the Project or the Site and any sub-system or any other property on or off the Site, and without injury to any Person;
- (d) The Project and each sub-system of the Project is functionally complete to the extent necessary for commissioning, initial operation, adjustment, and testing; and

- (e) Owner has accepted or is deemed to have accepted a Project Mechanical Completion Certificate with respect to such Work pursuant to Section 13.4.

13.3 Achievement of Foundation Completion When Contractor believes that it has achieved Foundation Completion it shall deliver to Owner a completed Foundation Completion Certificate. Such certificate shall include the results of all testing relevant to achievement of such milestone and otherwise contain a report in a form reasonably acceptable to Owner and with sufficient detail to enable Owner to determine that Contractor has achieved Foundation Completion. The report shall include, but not be limited to, the following:

- (a) An organized submittal for each foundation in both electronic and hard copy format including, but not limited to, the following:
 - a. Those items identified in Section 13.1 (f);
 - b. foundation excavation report;
 - c. open hole inspection report (if applicable);
 - d. concrete placement log, including concrete batch tickets;
 - e. direct embed installation report;
 - f. foundation installation report;
 - g. anchor bolt foundation installation report;
 - h. structure grounding and resistance measurement;
 - i. steel mill certificates;
 - j. compressive strength report
 - k. non-destructive testing / discrepancy resolution report
- (b) The ground grid analysis referred to in Section 13.1 (g) in its native file format;
- (c) Other documentation as requested by Owner to verify completion of those items identified in Section 13.1.

Owner shall, within ten (10) Business Days, following receipt of a Foundation Completion Certificate, either: (a) deliver to Contractor a countersigned Foundation Completion Certificate, indicating its acceptance of the achievement of such milestone; or (b) if reasonable cause exists for doing so, notify Contractor in writing that such milestone has not been achieved, stating in detail the reasons therefor. If Owner delivers the notice under the preceding clause (b), Contractor promptly shall take such action, including the performance of additional Work to achieve such milestone, and upon completion of such actions shall issue to Owner another notice with respect to such milestone pursuant to this Section 13.2. Such procedure shall be repeated as necessary until such milestone has been achieved. For all purposes of this Agreement, the date of achievement of Foundation Completion shall be the date on which Contractor delivers to Owner the Foundation Completion Certificate that Owner ultimately accepts or is deemed to have accepted or pursuant to a determination under the dispute resolution procedures, should have accepted. If Owner fails to respond to Contractor's

submitted Foundation Completion Certificate within the time set forth above, such Certificate shall be deemed accepted by Owner on the date submitted by Contractor. Any disputes regarding the existence or correction of any such alleged deficiencies shall be resolved pursuant to Article 36.

13.4 Achievement of Project Mechanical Completion When Contractor believes that it has achieved Project Mechanical Completion it shall deliver to Owner a completed Project Mechanical Completion Certificate. Such certificate shall include the results of all testing relevant to achievement of such milestone and otherwise contain a report in a form reasonably acceptable to Owner and with sufficient detail to enable Owner to determine that Contractor has achieved Project Mechanical Completion.

Owner shall, within ten (10) Business Days, following receipt of a Project Mechanical Completion Certificate, either: (a) deliver to Contractor a countersigned Project Mechanical Completion Certificate, indicating its acceptance of the achievement of such milestone; or (b) if reasonable cause exists for doing so, notify Contractor in writing that such milestone has not been achieved, stating in detail the reasons therefor. If Owner delivers the notice under the preceding clause (b), Contractor promptly shall take such action, including the performance of additional Work to achieve such milestone, and upon completion of such actions shall issue to Owner another notice with respect to such milestone pursuant to this Section 13.4. Such procedure shall be repeated as necessary until such milestone has been achieved. For all purposes of this Agreement, the date of achievement of Project Mechanical Completion shall be the date on which Contractor delivers to Owner the Project Mechanical Completion Certificate that Owner ultimately accepts or is deemed to have accepted or pursuant to a determination under the dispute resolution procedures, should have accepted. If Owner fails to respond to Contractor's submitted Project Mechanical Completion Certificate within the time set forth above, such Certificate shall be deemed accepted by Owner on the date submitted by Contractor. Any disputes regarding the existence or correction of any such alleged deficiencies shall be resolved pursuant to Article 36.

14. TESTS AND TESTING

14.1 Test Procedures. Contractor shall: (i) provide for Owner's review and approval detailed Mechanical Completion Test Procedures in accordance with the requirements for testing, documenting and satisfactorily achieving each Acceptance Requirement, as set out in Exhibit "A" not less than one hundred and twenty (120) days prior to the start of testing and such Mechanical Completion Test Procedures must be agreed upon by Contractor and Owner at least sixty (60) days prior to the commencement of testing with the Test Procedures clearly indicating when in the testing schedule Interconnection will be required; and (ii) keep the Project Representative apprised of the specified schedule and changes thereto for the commencement and performance of such activities.

14.2 Conduct of Tests. The representatives of Owner and Owner's Engineer shall have the right, but not the obligation, to be present during any tests performed by Contractor under this Contract.

14.3 Test Schedules. A projected schedule shall be provided by Contractor with submission of Mechanical Completion Test Procedures required in Section 14.1 and agreed to at least thirty (30) days prior to the anticipated start of the applicable Tests. Contractor shall provide Owner at least ten (10) days' prior Notice thereof prior to performing such tests. The Contractor shall keep the Project Representative apprised of the specified schedule, and changes therein, for the commencement and performance of such tests, and shall give the Project Representative at least five (5) Business Days' prior Notice of the re-performance of any such tests. A test conducted by the Contractor without the required Notice to Owner shall not be valid for the purposes of this Contract.

14.4 Owner Testing. Owner shall provide Notice to Contractor of any construction deficiencies identified during any Owner Testing as soon as practicable but no later than five (5) days after identification of the deficiency and in all cases not later than fifteen (15) days prior to the Substantial Completion Guaranteed Date.

15. SUBSTANTIAL COMPLETION AND FINAL COMPLETION

15.1 Substantial Completion. Substantial Completion shall be achieved when:

- (a) Contractor shall have achieved Foundation Completion for each foundation that is part of the Project;
- (b) The Project and each sub-system of the Project, in each case to the extent required for commissioning, initial operation and adjustment is mechanically, electrically, and structurally constructed in accordance with the requirements of this Contract, the Scope of Work and Industry Standards, including completion of all testing required in Exhibit A;
- (c) The Project and each sub-system of the Project may be commissioned and operated without damage to the Project and any sub-system or any other property on or off the Site, and without injury to any Person;
- (d) The Project and each sub-system of the Project is functionally complete to the extent necessary for commissioning, initial operation, adjustment and testing;
- (e) Owner has received copies of all Contractor Acquired Permits required for operation of the Project;

- (f) Contractor has certified by Notice to Owner that it has administered the training required by Section 4.22;
- (g) Owner has received all Contractor Deliverables due prior to Substantial Completion in accordance with the terms of this Contract;
- (h) The Punchlist and a schedule and budget for completion of each Punchlist Item, in each case reasonably satisfactory to Owner, have been developed by Contractor and delivered to Owner;
- (i) All Work other than those Punchlist Items shown on the Punchlist or Work which by its nature is to be performed after Substantial Completion has been completed by Contractor;
- (j) The Project as a whole may be operated in accordance with Industry Standards and manufacturers' warranties without damage to the Project or any sub-system or part thereof or any other property on or off the Site and without injury to any Person;
- (k) No Contractor Event of Default exists;
- (l) All other Work except for the Punchlist,, which is not part of the Work necessary to commission, test, start-up and operate the Project, has been completed in accordance with Industry Standards and manufacturers warranties and can be utilized and function without damage to the Work, the Site or any other property on or off the Site and without injury to any Persons; and all Applicable Permits with respect to such Work have been provided to Owner; and
- (m) Owner has accepted or is deemed to have accepted a Substantial Completion Certificate with respect to such Work pursuant to Section 15.2.

15.2 Achievement of Substantial Completion. When Contractor believes that it has achieved Substantial Completion, it shall deliver to Owner a completed Substantial Completion Certificate. Such certificate shall include the results of all testing relevant to achievement of such milestone and otherwise contain a report in a form reasonably acceptable to Owner and with sufficient detail to enable Owner to determine that Contractor has achieved Substantial Completion. Owner shall, within ten (10) Business Days following receipt of such certificate, either: (a) deliver to Contractor a countersigned Substantial Completion Certificate indicating its acceptance of the achievement of such milestone; or (b) if reasonable cause exists for doing so, notify Contractor in writing that such milestone has not been achieved, stating in detail the reasons therefor. If Owner delivers the notice under the preceding clause (b), Contractor promptly shall take such action, including the performance of additional Work to achieve such milestone, and upon completion of such actions shall issue to Owner another Notice with respect to such milestone pursuant to this Section 15.2. Such procedure shall be

repeated as necessary until such milestone has been achieved. For all purposes of this Agreement, the date of achievement of Substantial Completion shall be the date on which Contractor delivers to Owner the Substantial Completion Certificate that Owner ultimately accepts or is deemed to have accepted or, pursuant to a determination under the dispute resolution procedures, should have accepted. If Owner fails to respond to Contractor's submitted Substantial Completion Certificate within the time set forth above, such Certificate shall be deemed accepted by Owner on the date submitted by Contractor. Any disputes regarding the existence or correction of any such alleged deficiencies shall be resolved pursuant to Article 36.

15.3 [Reserved.]

15.4 [Reserved.]

15.5 Final Completion. Final Completion of the Work and the Project shall be deemed to have occurred only if and when all of the following have occurred:

- (a) Contractor has achieved Substantial Completion in accordance with Section 15.2;
- (b) Owner has received at least one (1) hard copy and one (1) electronic copy of legible and complete as-built documentation, calculations, test data, performance data, Equipment descriptions, Required Manuals, training aids, Spare Parts lists, and other technical information each as required hereunder for Owner to start up, operate, commission, and maintain the Project;
- (c) All tools and Spare Parts purchased by Contractor to replace those used by Contractor during commissioning have been purchased for delivery to Owner free and clear of liens;
- (d) All Contractor's and Subcontractors' personnel, supplies, tools, equipment, machinery, surplus materials, waste materials, rubbish, and temporary facilities to which Owner does not hold title have been removed from the Site, and any permanent facilities used by Contractor and the Site have been restored in accordance with the terms of the Contract. All cleanup and disposal shall be conducted in accordance with all Applicable Laws;
- (e) Owner has received from Contractor all information requested by Owner and required for Owner's final fixed asset records with respect to the Project in accordance with Section 4.9;
- (f) Contractor has paid Owner all amounts due hereunder and not in dispute;

- (g) Contractor has assigned to Owner or provided Owner with all warranties or guarantees that Contractor received from Subcontractors to the extent Contractor is obligated to do so pursuant to Section 18.6;
- (h) The Punchlist Items have been completed to the satisfaction of Owner;
- (i) Contractor has delivered the certifications, Final Release and Waiver of Liens and Claims, or the bonds, in accordance with Section 7.6 and has delivered such other documents and certificates as Owner has reasonably requested to ensure compliance with all Applicable Laws;
- (j) Contractor has, within 60 days of the Substantial Completion Date, provided a detailed list of quantities by Property Retirement Unit (PRU) for each Pricing Schedule Item shown in Exhibit "Y". The material and installation costs for major pieces of equipment should be broken out separately. Examples of this equipment are identified in Exhibit "Y". For transmission, the final quantities shall match the final schedule of values updated by Contractor in accordance with Exhibit "D". In addition for transmission, Exhibit "Y" identifies specific information that will be submitted by Contractor in an electronic format acceptable to Company;
- (k) RESERVED
- (l) Owner has accepted or is deemed to have accepted a Final Completion Certificate pursuant to Section 15.6.

15.6 Achievement of Final Completion. When Contractor believes that it has achieved Final Completion, it shall deliver to Owner a completed Final Completion Certificate. Such certificate shall include the results of all testing relevant to achievement of such milestone and otherwise contain a report in a form reasonably acceptable to Owner and with sufficient detail to enable Owner to determine that Contractor has achieved Final Completion. Owner shall, within twenty (20) Business Days following receipt of such certificate, either: (a) deliver to Contractor a countersigned Final Completion Certificate indicating its acceptance of the achievement of such milestone; or (b) if reasonable cause exists for doing so, notify Contractor in writing that such milestone has not been achieved, stating in detail the reasons therefor. If Owner delivers the notice under the preceding clause (b), Contractor promptly shall take such action, including the performance of additional Work to achieve such milestone, and upon completion of such actions shall issue to Owner another notice with respect to such milestone pursuant to this Section 15.6. Such procedure shall be repeated as necessary until such milestone has been achieved. For all purposes of this Agreement, the date of achievement of Final Completion shall be the date on which Contractor delivers to Owner the Final Completion Certificate that Owner ultimately accepts or is deemed to have accepted or, pursuant to a determination under the dispute resolution procedures, should have accepted. If Owner fails to respond to Contractor's submitted Final Completion Certificate within the time set forth above, such Certificate shall be deemed accepted by

Owner on the date submitted by Contractor. Any disputes regarding the existence or correction of any such alleged deficiencies shall be resolved pursuant to Article 36.

15.7 Contractor's Access After Substantial Completion. Following Substantial Completion, Owner shall provide Contractor with reasonable and timely access subject to the terms of this Contract to complete Punchlist Items and to satisfy the other requirements for Final Completion; provided, however, Owner shall not be obligated hereunder to shut down, reduce or otherwise interfere with its operation of the Project or the Transmission Grid as a direct or indirect result of allowing Contractor access pursuant to this Section 15.7. Owner will: (a) provide Contractor with reasonable advance Notice of any extended scheduled outages of the Project or the Transmission Grid and the expected duration thereof; and (b) cooperate with Contractor with regard to reasonable requests by Contractor for access during such extended scheduled outages of the Project or the Transmission Grid.

16. DELAY DAMAGES

16.1 Liquidated Damages for Delay. Contractor understands that if the Substantial Completion does not occur on or before the Substantial Completion Guaranteed Date or if the operation of the Transmission Grid is interrupted or otherwise affected, Owner will suffer substantial damages, including, potentially, additional interest and financing charges on funds obtained by Owner to finance the Work, reduction of the return on Owner's equity investment in the Project, and other operating and construction costs and charges. Therefore the following liquidated damages, collectively the "Delay Liquidated Damages", shall be payable by Contractor to Owner:

16.1.1. Project Mechanical Completion Delay LDs. Contractor agrees that, if Project Mechanical Completion is not achieved by the applicable Project Mechanical Completion Guaranteed Date, Contractor shall pay liquidated damages ("Project Mechanical Completion Delay LDs") in the amount of \$_____ per day for each day by which the Project Mechanical Completion Date is delayed

16.1.2. Substantial Completion Delay LDs. Contractor agrees that, if Substantial Completion is not achieved by the applicable Substantial Completion Guaranteed Date, Contractor shall pay liquidated damages ("Substantial Completion Delay LDs") in the amount of \$_____ per day for each day by which the Substantial Completion Date is delayed. Substantial Completion Delay LD's will be in addition to the Project Mechanical Delay LD's, where Project Mechanical Completion Date has not been achieved by the date of Substantial Completion Guaranteed Date, and until the date of accepted Project Mechanical Completion.

Delay Liquidated Damages will not be assessed to the extent that the failure to meet the dates is attributable is caused by an Owner caused delay.

16.1.3. Transmission Grid Interference. Contractor agrees to pay liquidated damages in the amount of \$_____ per day, per transmission line for each day that a transmission line which is a part of the Transmission Grid is out of service or materially interfered with prior to Final Completion, to the extent of a Contractor Cause.

16.1.4As-Built Drawings. Contractor agrees to pay liquidated damages in the amount of One Thousand Dollars (\$1,000) per day for each and every day that the As-Built drawing completion date, as specified in Exhibit "G" is not achieved

16.1.4. Proration of Daily Amounts. Notwithstanding that the liquidated damage amounts set forth in this Section 16.1 are identified on a per day basis, the actual amount of liquidated damages will be determined and be payable on an hourly basis; and the amount per hour is determined by dividing the per day amount by twenty-four.

16.2 Payment of Liquidated Damages. Any amount Contractor is obligated to pay to Owner under Section 16.1 shall be due and payable ten (10) days after receipt of a written request therefor from Owner.

16.3 Offset. If Contractor is obligated to pay any amount to Owner pursuant to this Article 16 and such amount is not paid within the time period referred to in such Section, then Owner shall have the right to offset any such amount against any amount then or thereafter due from Owner to Contractor under this Contract and to exercise its rights against any security provided by or for the benefit of Contractor in such order as Owner may elect in its sole discretion.

16.4 Sole and Exclusive Remedy. Contractor and Owner agree that Owner's actual damages in the event of delays in achieving completion of the various parts of the Project would be extremely difficult or impracticable to determine and that, after negotiation, Owner and Contractor have agreed that the Delay Liquidated Damages set forth in Section 16.1 are a reasonable estimate of the damages that Owner would incur as a result of such delays or failures and are not intended in any way to be a penalty. Subject to Article 35, the amounts payable under Section 16.1 and, if such failure constitutes a Contractor Event of Default the remedies provided for in Article 20, shall be Owner's sole remedies for delays in achieving Substantial Completion by the Substantial Completion Guaranteed Date; and interruption or interference with the Transmission Grid as provided in Sections 16.1.2.

17. CHANGES IN THE WORK

17.1. Change in Work. A Change in Work may result only from any of the following:

- (a) A Change in Work required by Owner in writing, including an acceleration of Work, in accordance with Section 17.2;

- (b) A Change in Work as provided in Section 4.33(d) (Hazardous Materials);
- (c) A Change in Work relating to Owner Acquired Permits as provided in Section 4.15;
- (d) A Change in Work as provided in Section 12.1 (uncovering non-defective Work);
- (e) A Change in Law;
- (f) An Owner Caused Delay;
- (g) Such other event which pursuant to the terms of this Contract expressly permit Contractor to obtain a Change in Work in accordance with this Article 17.

A Change in Work may result from an event of Force Majeure but Contractor's sole remedy for the occurrence of an event of Force Majeure shall be an extension of time in accordance with Section 9.6 and Section 17.4.3.

17.2 By Owner. Owner may request a Change in Work, whether such changes are modifications, alterations, decelerations, additions, or deletions. Upon receipt of such Notice, Contractor shall prepare and provide Owner with a completed Change in Work form identified in Exhibit "E" within fifteen (15) Days thereafter. All such changes shall be made in accordance with this Article 17 and shall be considered, for all purposes of this Contract, as part of the Work.

17.3 By Contractor. Contractor shall only be entitled to request a Change in Work to the extent permitted in Section 17.1 upon a) delivery by Contractor to Owner of a written notice of its intention to submit a request for a Change in Work within five (5) Business Days after the date that Contractor becomes aware of the event or condition giving rise to the entitlement to a Change in Work, and b) Contractor prepares and provides Owner with a completed Change in Work form identified in Exhibit "E" within fifteen (15) Days thereafter.

17.4 Adjustments to the Contract.

17.4.1 Adjustments to Project Schedule. If Owner directs a Change in Work in accordance with Section 17.2, or if Contractor is entitled to request a Change in Work in accordance with Section 17.3, and if (in either case) as a result, Contractor shall be actually and demonstrably delayed in the performance of a Critical Path Item as scheduled in the Critical Path Method Schedule, then Contractor may request a Change in Work and upon such request, the Critical Path Method Schedule (and each Project Guaranteed Date referenced therein) shall be extended by the period of time that Contractor is actually and demonstrably delayed in the performance of a Critical Path Item. Owner shall

have the right, in lieu of extending a Project Guaranteed Date, to direct Contractor to accelerate the Work in accordance with Section 17.2.

17.4.2 Adjustments to the Contract Price. If Owner directs a Change in Work in accordance with Section 17.2, or if Contractor is entitled to request a Change in Work in accordance with Section 17.3, and if (in either case) such Change in Work impacts Contractor's costs of performing the Work, then an equitable adjustment to the Contract Price shall be made. Where Contractor is entitled to an equitable adjustment, and where Exhibit R, as applicable, provides unit price rates with respect to the applicable Change in Work, the Contract Price shall be adjusted solely in accordance with the unit price rates set forth in Exhibit R, as applicable. Without limiting the generality of the forgoing, unit price rates shall be the sole basis for equitable price adjustments with respect to Changes in Work requiring: route changes with respect to the transmission line, transmission line pole relocations, additions of transmission pole structures, changes in transmission pole structure types, changes in foundation types and/or changes in access road routes or configurations. For the avoidance of doubt,. For Changes in Work for which no unit price rates are provided in Exhibit R, then the Contract Price shall be changed to reflect the amount of increased or decreased costs at such other fixed price, unit rate,time and materials rates or other rates as the Parties may agree; provided, however, that, to the extent reasonably possible, such equitable adjustments to the Contract Price shall be consistent with commodity cost, equipment cost, labor cost, resource staffing requirements, overhead, profit, and other assumptions embedded in the unit price rates for analogous work as set forth in Exhibit R. Owner may direct the Contractor to proceed with the Change in Work pending negotiation of a Change in Work Form by issuing a written unilateral directive (which shall be considered a Change in Work Form for purposes of Section 17.7.2) and Contractor shall continue with the performances of Work.

17.4.3 Adjustments to the Progress Payment Amounts or Progress Payment Schedule. If Owner directs a Change in Work in accordance with Section 17.2, or if Contractor is entitled to request a Change in Work in accordance with Section 17.3, and if (in either case) such Change in Work impacts Contractor's costs or schedule for performing the Work, then (a) an equitable adjustment to the Contract Schedule shall be made in accordance with Section 17.4.1; (b) an equitable adjustment to the Contract Price shall be made in accordance with Section 17.4.2. If either or both equitable adjustment(s) entitle the Contractor to a change in any of the Interim Progress Milestone, Progress Payment Amount or Progress Payment Schedule then the Contractor shall be solely responsible for applying to the Owner for written authorization of an equitable adjustment of such item(s) as they may apply by providing all relevant and necessary supporting documentation and analysis to permit the Owner to provide a decision in such matters. The Owner shall review such application in a timely manner and mutually agree within 30 days with the Contractor revisions to

the Interim Progress Milestones, Progress Payment Amounts and Progress Payment Schedule as they may apply.

17.4.4 Force Majeure. Upon the occurrence of an event of Force Majeure, if Contractor shall be actually, demonstrably and materially delayed in the performance a Critical Path Item as scheduled in the Critical Path Method Schedule as a result of such event or circumstance, then Contractor may request a Change in Work under which the Project Guaranteed Dates shall be extended by the period of time Contractor is so actually and demonstrably delayed in the performance of a Critical Path Item and as set forth in the Change in Work Form accepted by Owner, but there shall be no change to the Contract Price.

17.4.5 Reduction In Cost. If a Change in Work involves a reduction in the cost to perform the Work including a reduction in the use of less labor resulting in reduced labor costs, there shall be a lump-sum deduction from the Contract Price, which deduction will be based on unit price rates set forth in Exhibit R. For Changes in Work for which no unit price rates are provided in Exhibit R then the Contract Price shall be reduced by the amount that Contractor has in its budget for the Work involved, inclusive of direct and indirect costs, overhead, margins, contingencies and fees.

17.4.6 Other Terms and Conditions to Apply. Subject to the equitable adjustments to price and schedule contemplated in this Article 17, all Changes in Work shall continue to be subject to the terms and conditions of this Contract including terms and conditions allocating Project risks between the Parties.

17.5. [RESERVED].

17.6 Disputes. If there is a dispute between the Parties about a request for a Change in Work by either Party under this Article 17, such dispute shall be resolved in accordance with Article 36. Notwithstanding any provision of this Article 17 to the contrary, the Parties will execute a Change in Work to reflect the resolution of such dispute.

17.7 Procedures.

17.7.1 Contractor's Estimate. Contractor shall, as soon as practicable after notification or becoming aware of such an event, prepare and deliver to Owner a detailed statement of the proposed Change in Work setting forth: (a) a description of the work covered by such Change in Work; (b) a detailed estimate of the cost (identifying labor, equipment, material costs and other expenses) and the estimated time required to implement the Change in Work and a quote for a firm price; and (c) the impact such Change in Work would have on (i) the Progress Payment Schedule; (ii) the Critical Path Method Schedule; (iii) the Project Guaranteed Dates; (iv) the Warranties; (v) the costs of operation and maintenance of the Project following Substantial Completion; and (vi) any other obligations of either Party of this Contract. Contractor shall not charge Owner for the costs of

preparing the Change in Work Form unless the Change in Work Form is not implemented.

17.7.2 No Unapproved Scope Changes. In no event shall Contractor be entitled to undertake or be obligated to undertake any Change in work until Contractor has received a Change in Work Form submitted by Contractor and accepted by Owner and, in the absence of such Change in Work Form, if Contractor undertakes any Changes in Work, Contractor shall make any such Changes in Work at Contractor's sole risk and expense and Contractor shall not be entitled to any payment or other relief under the Contract for undertaking such changes.

17.7.3 Failure to Comply with Notice Requirements. In the event Contractor does not provide Notice within the five (5) Business Days of the date Contractor became aware of the facts or circumstances that permit Contractor to seek a Change In Work permitted under this Article 17 as required by Section 17.3, Contractor shall not be entitled to a Change In Work under this Article 17 or any other relief hereunder.

17.8 No Suspension Contractor shall not suspend the Work pending resolution of any proposed Change in Work unless directed by Owner in writing in accordance with Article 22. Contractor's rights in the cases of a dispute involving a proposed Change in Work (or the equitable adjustments related to a proposed Change in Work) shall be as set forth in Section 17.4 and Article 36.

18. WARRANTIES CONCERNING THE WORK

18.1 Project Warranties. During the Warranty Period, Contractor warrants and guarantees with respect to the Project (the "Project Warranties") that all Work shall conform to the Materials Warranty set out in Section 18.2 and that all Work (other than Work covered by the Materials Warranty), including the Pre-Construction Services, the design and construction of the Project and the installation of the Equipment shall be: (a) in accordance with Industry Standards; (b) free from Defects; (c) in conformance with all applicable requirements of this Contract; and (d) safe and fit for Owner's use as part of the Transmission Grid as set forth in this Contract. In addition, with respect to Pre-Construction Services, Contractor shall perform the Pre-Construction Services in accordance with the scope set forth in the Limited Notice to Proceed and using the standards of care, skill, and diligence normally provided by a professional in the performance of similar services, and shall comply with all laws, codes and standards applicable to the Pre-Construction Services.

18.2 Materials Warranty. During the Warranty Period, Contractor further warrants that all Equipment and other items furnished by Contractor and any Subcontractors hereunder shall be new and of good and suitable quality when installed, shall conform to the requirements of this Contract, including the Scope of Work, shall be free from any

charge, lien, security interest or other encumbrance and shall be free of any Defects (the “Materials Warranty”). If requested by Owner, Contractor shall provide Owner with satisfactory evidence that any item(s) of Equipment satisfy the Materials Warranty. As part of the Materials Warranty, Contractor specifically covenants that all rights and benefits which Contractor possesses with regard to warranty obligations of any manufacturer of Equipment shall be fully available to or assigned to Owner.

18.3 Warranty Period. The “Warranty Period” for the Work shall be as follows:

- (a) With respect to the Work), a period of __10__ years from the Substantial Completion Date.

Contractor shall have no liability under Section 18.1 or 18.2 from and after the end of the Warranty Period (as such period may be extended in accordance with the terms hereof); provided, however, that the Warranty Period for any item or part required to be repaired, corrected or replaced following discovery of a Defect during the original Warranty Period shall be extended from the time of such repair, correction or replacement for a period that in no event shall extend beyond a date that is five (5) years after expiration of the Warranty Period.

18.4 Enforcement After Expiration. Commencing on the expiration of the Warranty Period, or such later date as is provided in Section 18.3, Owner shall be responsible for enforcing all representations, warranties, and guarantees from Subcontractors, and Contractor shall provide reasonable assistance to Owner, on a reimbursable basis, in enforcing such representations, warranties, and guarantees, when and as reasonably requested by Owner. In addition, prior to the expiration of each respective Warranty Period, or such later date as is provided in Section 18.3 with respect to Work required to be re-performed, Owner, at its option and upon prior written Notice to Contractor, may enforce any such warranty against any Subcontractor if: (a) Owner determines that Contractor has not enforced such warranty against the Subcontractor in a timely and diligent manner or performed the warranty work itself, or (b) a Contractor Event of Default exists and owner has taken actions to terminate this Contract in accordance with the terms hereof.

18.5 Exclusions. The Project Warranties and Materials Warranty set forth in Section 18.1 and Section 18.2 shall not apply to damage to any Equipment to the extent such damage is caused by:

- (a) Owner’s failure to operate and maintain such Equipment in accordance with Industry Standards;
- (b) Owner’s operation of such Equipment in excess of the operating specifications for such Equipment;
- (c) The use of parts or consumables in the repair or maintenance of such Equipment that are not in accordance with Industry Standards;

- (d) Any event of Force Majeure; or
- (e) Normal wear and tear.

18.6 Subcontractor Warranties. Without in any way derogating from Contractor's own representations and warranties with respect to all of the Work, Contractor shall use its reasonable efforts: (a) to obtain from all Subcontractors (including Vendors) any representations, warranties, guarantees, and obligations offered by such Subcontractors; and (b) to attempt to negotiate warranty periods longer than the Warranty Periods at no additional cost to Contractor with respect to design, materials, workmanship, Equipment, tools, supplies and other items furnished by such Subcontractors. All representations, warranties, guarantees, and obligations of such Subcontractors shall be assigned to Owner, in accordance with the provisions of this Contract, including Exhibit "P", to Owner upon Substantial Completion; provided, however, that, notwithstanding such assignment, Contractor shall also be entitled to enforce each such representation, warranty, guarantee, and obligation through the end of the applicable warranty periods as an express third-party beneficiary. Contractor shall deliver to Owner promptly following execution of such applicable contract with a Subcontractor and upon Owner's request duly executed copies (with pricing information redacted) of all contracts containing such representations, warranties, guarantees, and obligations.

18.1. Correction of Defects.

- (a) Owner shall promptly give Notice to Contractor upon discovery of any failure of any of the Work to satisfy the Project Warranties or the Materials Warranty during the applicable Warranty Period (including Subcontractor warranty period). In the event of any such failure under circumstances in which there is an immediate need as defined in Section 18.8, then Owner shall perform such warranty work for Contractor's account in accordance with the Warranty Procedures; provided, however, that the failure to comply with such Warranty Procedures shall not void the Project Warranties or the Materials Warranty. In all other cases, Contractor shall, at its own cost and expense (except to the extent of insurance proceeds actually received), be responsible for re-performing any necessary engineering and purchasing relating to such Equipment, material, labor, and shipping, and removing any Defect and the cost of replacement thereof, including any resulting damage to surrounding Work and/or adjacent property, equipment and facilities, as shall be necessary to cause the Work and the Project to conform to the Project Warranties or Materials Warranty. Within five (5) days after receipt by Contractor of a Notice from Owner specifying a failure of any of the Work to satisfy Contractor's Project Warranties or the Materials Warranty and requesting Contractor to correct the Defect, Contractor and Owner shall mutually agree when and how Contractor shall remedy said Defect. If Contractor does not use commercially reasonable efforts to proceed to complete said remedy within the time agreed to, or should Contractor and Owner fail to reach such an agreement within such five (5) day period, Owner shall have the right to

perform the necessary remedy, or have third parties perform the necessary remedy, in accordance with the Warranty Procedures; provided, however, that the failure to comply with such Warranty Procedures shall not void the Project Warranties or the Materials Warranty, and the costs as established pursuant to the Warranty Procedures shall be borne by Contractor.

- (b) Notwithstanding the foregoing, Contractor shall have the right to request Owner to perform all or any portion of Contractor's obligations with respect to any warranty claim, and, if Owner determines that it has the capability and expertise to perform such obligations, Owner shall perform such obligations and all costs incurred thereby shall be for Contractor's account in accordance with the Warranty Procedures; provided, however, that the failure to comply with such Warranty Procedures shall not void the Project Warranties or the Materials Warranty.

18.8 Additional Warranty Procedures. Where Owner determines that an immediate need exists, Owner may undertake immediate corrective action, including contacting the applicable Vendor directly to seek assistance. An "immediate need" is a situation when there is: (a) a threat of imminent harm to persons or property; (b) a situation that in Owner's reasonable determination could materially adversely impact the operation of the Project or the Transmission Grid; or (c) an electric line outage, generation project outage or customer outage that in Owner's reasonable determination requires immediate action.

Where Owner does not take corrective action under this Section 18.8, Owner shall notify Contractor in accordance with Section 18.7 of the Contract and provide documents as provided below. Within two (2) days after receipt of said documents, Contractor and Owner shall confer with regard to the appropriate procedures to utilize in correcting the Defect and shall within a reasonable period thereafter (not to exceed thirty (30) days) mutually agree when and how Contractor shall remedy said Defect. If Contractor does not use its reasonable efforts to proceed to complete said remedy within the time agreed to, or should Contractor and Owner fail to reach such an agreement within such thirty (30) day period, Owner shall have the right to perform the necessary remedy, or have others perform the necessary remedy, in accordance with the Warranty Procedures; provided, however, that the failure to comply with such Warranty Procedures shall not void the Project Warranties or the Materials Warranty, and the costs reasonably incurred shall be borne by Contractor.

The following procedures ("Warranty Procedures") shall be observed in all Contractor warranty claims for the Project in connection with which Owner has independently taken corrective action as set forth above with respect to an "immediate need":

- (a) Owner shall promptly provide telephonic notice to Contractor's designated warranty representative of any failure of the Work to satisfy either the Project Warranty or the Materials Warranty;
- (b) A failure report, which shall contain technical and logistical information sufficiently detailed to enable Contractor to assess the damage of the

Work and to evaluate appropriate corrective action shall be provided by Owner within a reasonable period of time after the occurrence of any event giving rise to a warranty claim;

(c) Warranty claims shall be submitted in accordance with paragraph (d) below, and shall include, as a required minimum, the following documents:

(i) Applicable failure report;

(ii) List of equipment and materials purchased or used in accomplishing the repair, schedule of operations, and subcontractors hours applicable to each claim, and a copy of any internal work orders or purchase orders prepared in connection with each such claim;

(iii) Owner's maintenance and repair records with respect to the Equipment for which the claim is being made, including the manufacturer/vendor part number and serial number and the identification by part number and serial number of the next major assembly call out; and

(iv) Copies of invoices received or prepared for costs and expenses claimed.

(d) All warranty claims pertaining to failure of the Equipment for which Owner has independently undertaken corrective action pursuant to this Section 18.8 during any calendar month shall be submitted to Contractor on or before the last day of the following calendar month. Claims shall be paid by Contractor on a net 21 day basis. Work performed by Owner under a warranty claim shall be billed on a time and materials basis as further defined below in paragraph (d). Any warranty claim submitted by Owner that is not disputed by Contractor within ninety (90) days shall be deemed to have been accepted by Contractor.

(e) "Time and Material" in connection with a warranty claim is defined as follows:

(i) With respect to "Time," the product of 115% of the normal hourly wage (including fringe benefits, insurance and taxes) Owner pays with respect to its particular employee (not including overhead) multiplied times the number of hours each employee performed the particular work.

(ii) With respect to "Material," 115% of the actual purchase price paid by Owner or an Affiliate to a third party for the materials incorporated or consumed in connection with the Work; and

(iii) With respect to Work performed by a subcontractor (other than an entity which is an Affiliate of Owner, Work performed by any such entity being deemed Work performed by Owner through its own employees for purposes of this definition), 115% of the actual amount paid by Owner to the subcontractor for such Work.

(f) Owner shall maintain adequate records to support all warranty claims and allow Contractor access to such records upon not less than ten (10) days' notice.

18.9 Limitations On Warranties. This Article provides the exclusive remedies for all claims based on a failure or Defect in the Work, whether the failure or Defect arises before or during the applicable warranty period and whether a claim, however described, is based on contract, warranty, indemnity, tort/extracontractual liability (including negligence), strict liability or otherwise. The warranties provided in this Article are exclusive and are in lieu of all other warranties and guarantees whether written, oral, implied or statutory EXCEPT FOR THE EXPRESS WARRANTIES AND REPRESENTATIONS SET FORTH IN THIS CONTRACT, CONTRACTOR DOES NOT MAKE ANY OTHER EXPRESS WARRANTIES OR REPRESENTATIONS, OR ANY IMPLIED WARRANTIES OR REPRESENTATIONS, OF ANY KIND WHATEVER RELATING TO THIS CONTRACT, THE WORK, OR DESIGN, EQUIPMENT, OR MATERIALS TO BE SUPPLIED BY CONTRACTOR UNDER THIS CONTRACT OR TO THE PROJECT, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY.

19. EQUIPMENT IMPORTATION; TITLE

19.1 Importation of Equipment. Contractor, at its own cost and expense, shall make all arrangements, including the processing of all documentation, necessary to import into the United States Equipment to be incorporated into the Project and any other equipment and other items necessary to perform the Work and shall coordinate with the applicable Governmental Authorities in achieving clearance of United States customs for all such Equipment and other items and, to the extent available under United States law but without limiting Contractor's liability for any and all import duties, Taxes and levies as specified in Section 6.2 and Section 6.3, achieving such importation duty-free and tax-free. In no event shall Owner be responsible for any delays in customs clearance or any resulting delays in performance of the Work. Such delays in customs clearance shall not be considered an event of Force Majeure, unless such delay is itself caused by a Force Majeure event.

19.2 Title.

19.2.1 Contractor warrants good title, free and clear of all liens, claims, charges, security interests, and encumbrances whatsoever, to all Equipment and other items furnished by it or any of its Subcontractors that become part of the Project or that are to be used for the operation, maintenance, or repair thereof.

19.2.2 Title to all Equipment and other items shall pass to Owner, free and clear of all liens, claims, charges, security interests, and encumbrances whatsoever, upon the earlier of payment in full therefor or incorporation into the Project or delivery to the Site, a Contractor Yard Site, or any laydown area or storage area used primarily in connection with the Work.

19.2.3 The transfer of title shall in no way affect Owner's rights as set forth in any other provision of this Contract. Contractor shall have care, custody, and control of all Equipment and other items (including Equipment and other items imported into the United States) and exercise due care with respect thereto consistent with Section 24.1.

19.3 Protection. For the purpose of protecting Owner's interest in all Equipment and other items with respect to which title has passed to Owner pursuant to Section 19.2 but that remain in possession of another Person, Contractor shall take or cause to be taken all steps necessary under Applicable Laws to protect Owner's title and to protect Owner against claims by other Persons with respect thereto.

20. DEFAULT

20.1 Contractor Events of Default. Contractor shall be immediately in default of its obligations pursuant to this Contract upon the occurrence of any one or more events of default below (each, a "Contractor Event of Default"):

- (a) Contractor or Parent Guarantor becomes insolvent, generally does not pay its debts as they become due, admits in writing its inability to pay its debts, or makes an assignment for the benefit of creditors, or insolvency, receivership, reorganization, or bankruptcy proceedings are commenced by Contractor or Parent Guarantor (as applicable);
- (b) Insolvency, receivership, reorganization, or bankruptcy proceedings are commenced against Contractor or Parent Guarantor and such proceedings shall remain undismissed or unstayed for a period thirty (30) days;
- (c) Any representation or warranty made by Contractor herein was false or materially misleading when made and Contractor fails to remedy such false or misleading representation or warranty, and to make Owner whole for any consequences thereof, within thirty (30) days after Contractor receives a Notice from Owner with respect thereto;

- (d) Contractor assigns or transfers (or attempts to so assign or transfer) this Contract or any right or interest herein, except as expressly permitted under Article 30;
- (e) Contractor fails to maintain any insurance coverages required of it in accordance with Article 23;
- (f) Contractor fails to perform or observe in any respect any provision of this Contract providing for the payment of an undisputed amount of money to Owner and such failure continues for ten (10) days after Contractor receives Notice from Owner with respect thereto;
- (g) Following approval of a Schedule Recovery Plan pursuant to Section 8.3, Contractor's unexcused failure to meet the schedule set forth in the Schedule Recovery Plan (as determined from the revised Critical Path Method Schedule established by the Schedule Recovery Plan);
- (h) Contractor is otherwise in breach of any material provision of this Contract, or has otherwise failed in a material respect to perform its obligations under this Contract (not otherwise addressed in this Section 20.1) and such breach or failure continues for thirty (30) days after Contractor receives Notice from Owner; provided, however, that if in Owner's determination such default or failure is not capable of cure within a thirty (30) day period and within a fifteen (15) day period after receipt of such Notice from Owner and Contractor commences and diligently proceeds to cure such default or failure, then such default or failure shall not constitute a Contractor Event of Default unless it remains uncured ninety (90) days from the date of the original Notice from Owner;
- (i) The Project Mechanical Completion Date with respect to the Project has not occurred on or before a date that is sixty (60) days after the Project Mechanical Completion Guaranteed Date; or the Substantial Completion Date with respect to the Project has not occurred on or before a date that is thirty (30) days after the Substantial Completion Guaranteed Date; or the Final Completion Date has not occurred on or before a date that is sixty (60) days after the Final Completion Guaranteed Date; or
- (j) Contractor has incurred the Maximum Aggregate Liquidated Damages; or
- (k) Contractor suspends or abandons the Work. "Suspend" for the purposes of this Section 20.1(k) means that Contractor has not accomplished any progress toward any of the Critical Path Items for a period of thirty (30) or more days and such suspension is not otherwise permitted under this Contract. "Abandon" for the purposes of this Section 20.1(k) means that Contractor has substantially reduced personnel at the Site or removed further required equipment from the Site such that, in the opinion of an experienced

construction manager, Contractor would not be capable of maintaining progress in accordance with the Critical Path Method Schedule.

20.2 Owner's Rights and Remedies. In the event of a Contractor Event of Default, Owner or its assignees shall have the following rights and remedies, in addition to any other rights and remedies that may be available to Owner or its assignees under this Contract and Applicable Laws, and Contractor shall have the following obligations:

- (a) Owner may, without prejudice to any of its other rights or remedies, terminate this Contract;
- (b) Owner may, without prejudice to any of its other rights or remedies, seek performance by any guarantor of Contractor's obligations hereunder or draw upon any applicable Letter of Credit provided in accordance with this Contract;
- (c) If requested by Owner, Contractor shall withdraw from the Site, shall assign to Owner such of Contractor's subcontracts and purchase orders that are not subject to Contractor's assignment under Section 10.3 and to the extent assignable, and Contractor Acquired Permits as Owner may request. If requested by Owner, Contractor shall deliver and make available to Owner all information, documents, patents, and licenses of Contractor related to the Work reasonably necessary to permit Owner to complete or cause the completion of the Work, and in connection therewith Contractor authorizes Owner and its agents to use such information in completing the Work. If requested by Owner, Contractor shall remove such materials, equipment, tools, and instruments used by and any debris or waste materials generated by Contractor in the performance of the Work as Owner may direct, and Owner may take possession of any or all Drawings and Specifications, Required Manuals, and Site facilities, related to the Work and necessary for completion of the Work (whether or not such Drawings and Specifications, Required Manuals, and Site facilities are complete);
- (d) Owner shall have the right (either with or without the use of Contractor's equipment) to have the Work finished whether by enforcing any security given by or for the benefit of Contractor for its performance under this Contract or otherwise, in which case Owner shall have the right to take possession of and use all construction equipment of Contractor necessary for completion of the Work, and Contractor shall have no right to remove such items from the Site until such completion; provided, however, Owner shall be responsible for any loss or damage incurred (normal wear and tear excluded) as a result of such use;
- (e) Owner may seek equitable relief to cause Contractor to take action or to refrain from taking action pursuant to this Contract or to make restitution of amounts improperly received under this Contract; or

- (f) Owner may seek damages as provided in Section 20.3, including proceeding against any bond, guarantee, Letter of Credit, or other security given by or for the benefit of Contractor for its performance under this Contract.

20.3 Damages for Contractor Default.

- (a) In the event of a Contractor Event of Default, but in such case subject to the limitations of Article 35, Contractor shall be liable to Owner for any and all actual damages (and also the damages payable in accordance with subparagraph (b) below) to Owner as a result of such Contractor Event of Default, it being understood that, to the extent that the actual costs of completing the Work, including compensation for obtaining a replacement contractor or for obtaining additional professional services required as a consequence of Contractor's Event of Default, exceed those costs that would have been payable to Contractor but for Contractor's Event of Default, Contractor shall be obligated to pay the difference to Owner. In addition, in the event of a Contractor Event of Default, Owner shall be entitled to withhold further payments to Contractor for the Work performed prior to termination of this Contract until Owner determines the liability of Contractor, if any, under this Section 20.3. Upon determination of the total cost of the Work, Owner shall give Notice to Contractor of the amount, if any, that Contractor shall pay Owner or Owner shall pay Contractor. Such payment hereunder shall be made within twenty-one (21) days after receipt of such Notice accompanied by reasonably satisfactory documentation substantiating the amounts payable.
- (b) In addition, if, in the event of a Contractor Event of Default set forth in clauses (g), (i) or (k) of Section 20.1, Owner elects to terminate this Contract pursuant to Section 20.2(a) above, then Contractor shall immediately pay to Owner the Maximum Aggregate Liquidated Damages as liquidated damages for such Contractor Event of Default and for Contractor's failure to proceed with or make adequate progress towards the completion of the Work as required by this Contract. Owner and Contractor agree that Owner's actual damages in the event of any Contractor Event of Default set forth in clauses (g), (i) or (k) of Section 20.1 would be extremely difficult or impracticable to determine and that, after negotiation, Owner and Contractor have agreed that the Delay Liquidated Damages and/or Maximum Aggregate Liquidated Damages required to be paid hereunder are a reasonable estimate of the damages that Owner would incur as a result of such a Contractor Event of Default.
- (c) If it is determined for any reason that Contractor was not in default or that its default was excusable or that Owner was not entitled to the remedy against Contractor provided above, the termination will be deemed to be a termination for convenience/early termination pursuant to Article 21.

20.4 Owner Event of Default. Owner shall be in default of its obligations pursuant to this Contract in the event Owner fails to perform or observe in any respect any provision of this Contract providing for the payment of an undisputed amount of money to Contractor, and such failure continues for ten (10) Business Days after Owner receives a Notice from Contractor with respect thereto (“Owner Event of Default”).

20.5 Contractor’s Remedies. In the event of an Owner Event of Default, and subject to Article 35, Contractor shall have all rights and remedies that may be available under Applicable Laws against Owner with respect to this Contract, including the right to suspend performance of the Work or to terminate this Contract (and including the right to immediately stop work upon an Owner Event Of Default for non-payment).

21. **EARLY TERMINATION**

21.1 General. Owner may in its sole discretion terminate all or part of the Work with or without cause at any time by giving Notice of termination to Contractor, to be effective upon the receipt of such Notice by Contractor or upon such other termination date specifically identified by Owner therein. If Owner terminates the Work without cause or for any cause other than a Contractor Event of Default specified in Section 20.1 or if the circumstances described in the last paragraph of Section 20.3 apply, then Contractor shall receive as compensation for the Work performed through the effective date of termination:

- (a) The sum, without duplication, of: (i) the aggregate amount set forth on the Project Payment Schedule for completion of items of Work that have been properly completed by Contractor, in accordance with this Contract; (ii) for each item of Work properly commenced but not yet completed by Contractor in accordance with this Contract, a percentage of the aggregate amount set forth on the Progress Payment Schedule for completion of such item based on the percentage of completion of such item; and (iii) reasonable demobilization costs; provided, however that the sum shall not exceed the amount set forth on the Cancellation Schedule corresponding to the month in which such termination occurs; minus
- (b) Any amounts previously paid to Contractor under this Contract, in respect of the Contract Price.

21.1.1 Adjustment for Defects. Notwithstanding the foregoing, the amount owed pursuant to Section 21.1 shall be subject to adjustment to the extent any Work contains Defects or to the extent of any overpayments by Owner and provided, further, that Contractor shall use its reasonable efforts to minimize costs that arise between the date of its receipt of a Notice of termination and the effective date thereof, including by promptly notifying its Subcontractors of such termination.

21.1.2 Assumption of Contractor Contracts. Owner shall have the right, at its sole option, to assume and become liable for any reasonable obligations that Contractor may have in good faith incurred for its Site personnel and for any

reasonable written obligations and commitments that Contractor may have in good faith undertaken with third parties in connection with the Work to be performed at the Site, which obligations and commitments shall not have been covered by the payments made to Contractor under Section 21.1. If Owner elects to assume any obligation of Contractor as described in this Section 21.1.2, then, as a condition precedent to Owner's compliance with any subsection of this Article 21, Contractor shall execute all papers and take all other reasonable steps requested by Owner which may be required to vest in Owner all rights, set-offs, benefits and titles necessary to such assumption by Owner of such obligations described in this Article 21. Owner shall simultaneously provide to Contractor indemnities against liabilities thereafter arising under the assumed obligations or commitments.

21.2 Claims for Payment. All claims for payment by Contractor under this Article 21 must be made within forty-five (45) days after the effective date of a termination hereunder. Owner shall make payments under this Article 21 in accordance with Article 7.

21.3 Termination Payments. The payments described in Section 21.1 include payment for all costs of Equipment, temporary equipment, materials, labor, transportation, engineering, design and other services relating to Contractor's performance of its obligations under this Contract (including any intellectual property rights licensed under this Contract, expressly or by implication) provided by Contractor. In addition to the payments described in Section 21.1, Owner shall pay Contractor for: (a) all Taxes on the Work (but not taxes based on Contractor's income or revenues); and (b) all other duties, levies, imposts, fees, or charges of any kind (whether in the United States or elsewhere) arising out of Contractor's or any such Subcontractor's performance of the Work, and (iii) any duties, levies, imposts, fees, charges, and royalties imposed on Contractor or its Subcontractors with respect to any such Equipment, materials, labor, or services provided under this Contract. Except as otherwise provided in Section 6.3, the above-described payments shall not be increased with respect to any of the foregoing or with respect to any withholdings in respect of any of the foregoing items that Owner may be required to make.

22. SUSPENSION

22.1 General. If at any time Owner, in its sole discretion, elects to suspend performance of the Work, Owner may suspend performance of the Work by giving Notice to Contractor. Such suspension shall commence and continue for the period specified in the suspension Notice. The Contract Price shall be adjusted as provided in clauses (a), (b), (c) and (d) of Section 22.2 to reflect any additional increased costs of Contractor resulting from any such suspension, as demonstrated by Contractor to Owner's reasonable satisfaction. No adjustment shall be made to the extent that performance is suspended, delayed, or interrupted for any cause due to Contractor's negligence, willful misconduct, or noncompliance with the terms of this Contract. At any time after the effective date of the suspension, Owner may require Contractor to commence to resume performance of the Work upon five (5) Business Days' Notice.

22.2 Contractor's Termination and Compensation Rights If, at the end of the specified suspension period, Owner has not requested a resumption of the Work or has not notified Contractor of any extension of the suspension period (but in no event beyond three hundred sixty-five (365) days in the aggregate for all such suspensions, other than suspensions for any reason due to Contractor's negligence, willful misconduct, or noncompliance with the terms of this Contract) Contractor may terminate this Contract. Owner shall promptly pay Contractor for the Work performed pursuant to Section 21.1. In addition, in the event of any such suspension, Owner shall pay Contractor within thirty (30) days after receipt of Contractor's Invoice for those reasonable costs incurred during the suspension period that are documented by Contractor to the reasonable satisfaction of Owner, to the extent attributable to the suspension, and that are:

- (a) For the purpose of safeguarding and/or storing the Work and the materials and Equipment at the point of fabrication, in transit, or at the Site;
- (b) For personnel, Subcontractors or rented equipment, the payments for which, with Owner's prior written concurrence, are continued during the suspension period;
- (c) For costs of demobilization and remobilization as approved by Owner; or
- (d) For rescheduling the Work (including penalties or additional payments to Subcontractors for the same).

22.3 Extension of Time. In the event of any suspension under this Article 22, other than from a cause due to Contractor's negligence, willful misconduct, or noncompliance with the terms of this Contract, the Project Guaranteed Dates shall be extended by a period equal to the suspension period, plus a reasonable period for demobilization and remobilization approved by Owner, and, provided that the Owner was notified of and approved suspension of long lead time Equipment orders, for any delays due to such suspension of long lead time Equipment for which the procurement schedule has been adversely affected, and the Critical Path Method Schedule and the Progress Payment Schedule shall be adjusted to account for same.

22.4 Claims for Payment. All claims by Contractor for compensation or extension of time under this Article 22 must be made within sixty (60) days after the suspension period has ended and the Work has been either terminated or resumed. Failure of Contractor to make such claim within said period shall be deemed a waiver by Contractor of any such claims.

23. INSURANCE

23.1. General.

23.1.1 Contractor's Insurance. Contractor, at its own expense, shall procure or cause to be procured and maintain or cause to be maintained in full force and

effect at all times, commencing no later than upon commencement of the Work at the Site and until expiration of the Warranty Periods, all insurance coverages specified in Exhibit "Q-1" (except that the ocean marine cargo coverage and, to the extent applicable, construction all risk insurance coverage need only be maintained in full force and effect until the Substantial Completion Date). All insurance coverage shall be in accordance with the terms of this Article 23 and Exhibit "Q-1" and Exhibit "Q-3" using companies, to the extent required by Applicable Laws, authorized to do business in_____.

23.1.2 Owner's Insurance. Owner, at its own expense, shall procure or cause to be procured and maintain or cause to be maintained in full force and effect at all times, commencing no later than upon commencement of the Work at the Site and until the Substantial Completion, all insurance coverages specified in Exhibit "Q-2" (except that, to the extent applicable, construction all risk insurance coverage need only be maintained in full force and effect until the Substantial Completion Date). All insurance coverages shall be in accordance with this Article 23 and Exhibit "Q-2" and Exhibit "Q-3" using companies, to the extent required by Applicable Laws, authorized to do business in _____

23.1.3 Non-Violation. Contractor shall not violate nor permit to be violated any conditions of the policies provided by Owner under the terms of this Contract and shall at all times satisfy the requirements of the insurance companies issuing them. All requirements imposed by such policies and to be performed by Contractor shall likewise be imposed upon and assumed by each Subcontractor.

23.2 Subrogation Waivers. All policies (except Professional Liability and Aircraft Liability) shall provide for a waiver of subrogation rights against Owner, Owner's Affiliates, Contractor, and their respective assigns, subsidiaries, Affiliates, directors, officers, employees, insurers, and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such Person insured under any such policy. Builders all risk insurance will not waive subrogation rights against manufacturers, suppliers, Subcontractors or Vendors for loss or damage caused by faulty design or workmanship in manufacturing of Equipment. Contractor releases, assigns, and waives any and all rights of recovery against the Owner, and Owner's Affiliates, subsidiaries, employees, successors, permitted assigns, insurers, and underwriters that Contractor may otherwise have or acquire in or from or in any way connected with any loss covered by policies of insurance maintained or required to be maintained by Contractor pursuant to this Contract or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

23.3 Evidence of Insurance. Evidence of insurance required hereunder, in the form required to be delivered by a Party, but in any event in the form of certificates of insurance certified by such Party's insurance brokers, shall be furnished by each Party when required to be delivered no later than the date on which coverage is required to be in effect pursuant to Exhibit "Q-1", Exhibit "Q-2" and Exhibit "Q-3" as applicable. If applicable, a copy of the "Builders All Risk" insurance policy required to be provided in

accordance with Exhibit "Q-1" shall be provided to the Owner for its review and approval (which approval shall not be unreasonably withheld) prior to any construction-related Work being performed at the Site or the delivery of any Equipment to the Site. If requested by Owner, copies of the other insurance policies shall be promptly provided by Contractor to Owner after the coverage date, excluding any premium information. Contractor's automobile liability, commercial general liability and excess liability policies shall provide a severability of interests or cross-liability clause applying to such liability policies; provided, however, that the insurance shall be primary and not excess to or contributing with any insurance or self-insurance maintained by Owner and contain a provision that the policies may not be canceled or changed except: (a) as provided in Exhibit "Q-1", Exhibit "Q-2" and Exhibit "Q-3" as applicable; or (b) if not therein provided, without thirty (30) days' or, in the case of nonpayment of premium, ten (10) days' prior written Notice given by certified mail to Owner and Contractor. Not later than the one-year anniversary of the date of delivery of the policies of insurance hereunder or the expiration date of the policy if for a term of more than one year, and not later than each one-year anniversary or policy renewal date thereafter, each Party shall deliver copies of the renewal insurance certificates as aforesaid.

23.4 Insurance Coverages. All amounts of insurance coverage under this Contract specified in Exhibit "Q-1", Exhibit "Q-2" and Exhibit "Q-3" are required minimums. Owner and Contractor shall each be solely responsible for determining the appropriate amount of insurance, if any, in excess thereof. The required minimum amounts of insurance shall not operate as limits on recoveries available under this Contract.

23.5 Failure to Maintain Insurance. If at any time the insurance to be provided by Owner or Contractor hereunder shall be reduced or cease to be maintained, then (without limiting the rights of the other Party hereunder in respect of any default that arises as a result of such failure) the other Party may at its option maintain the insurance required hereby, and, in such event: (a) Owner may withhold the cost of insurance premiums expended for such replacement insurance from any payments to Contractor; or (b) Owner shall reimburse Contractor for the premium of any such replacement insurance, as applicable.

23.6 Scope of Coverage. Contractor shall require such automobile liability, commercial general liability, excess liability insurance and workers' compensation/employer's liability insurance of Subcontractors who perform services at the Site as shall be reasonable and in accordance with Industry Standards in relation to the Work or other items being provided by each such Subcontractor. Each Subcontractor shall provide evidence of its insurance to Owner prior to performing any Work at the Site.

24. RISK OF LOSS OR DAMAGE

24.1 Contractor Assumption of Risk. From the Effective Date until the Substantial Completion Date, Contractor assumes risk of loss and full responsibility for the cost of replacing or repairing the damage to the Project (including any insurance deductible and any uninsured losses) and all materials, Equipment, supplies and maintenance equipment (including temporary materials, equipment and supplies) which are purchased by

Contractor or Owner for permanent installation in or for use during construction of the Project regardless of whether Owner has title thereto under this Contract, unless such loss or damage is a result of the negligence or intentional misconduct of Owner or Owner's agents during such time as such agents are acting under Owner's control, in which case Owner shall be responsible for the amount of any deductible amounts under applicable policies as identified in Exhibit "Q-1". Owner shall bear the risk of loss and be responsible for any damage with respect to the Project after the Substantial Completion Date or Owner's existing structures, materials or equipment adjacent to or on the Site, except in the event and to the extent such loss or damage is a result of: (a) the continuing performance of the Work by the Contractor (including any Subcontractor); (b) the negligence or intentional misconduct of Contractor or any Subcontractor (including any of their employees or agents); or (c) a defect or other failure covered under any warranty set forth herein or any other act, omission or event for which Contractor is legally liable to Company under contract, law, or equity.

24.2 Loss or Damage; Limitations. If any portion of the Work is lost or damaged during the period when Contractor has the risk of loss in accordance with Section 24.1, then Contractor shall replace or repair any such loss or damage and complete the Work in accordance with this Contract. Notwithstanding the foregoing, to the extent that Owner has maintained construction all risk insurance for the Project, Contractor shall not be obligated to replace or repair any such loss or damage unless: (a) Owner has properly carried and maintained such insurance pursuant to Article 23 and Contractor has received reasonable assurances from Owner that Owner will prosecute such claim in a commercially reasonable manner and Contractor will receive the insurance proceeds, if any, paid under such Owner maintained insurance coverages in accordance with the disbursement provisions of this Contract; or (b) Owner agrees to pay for such replacement or repair as requested by Owner in accordance with Section 17.2. Should a loss be sustained under a third party liability policy, Contractor shall assume all responsibilities of an insured under the terms of said insurance.

25. INDEMNIFICATION

25.1 By Owner. Except for matters expressly made Contractor's responsibility hereunder or otherwise expressly limited as set forth in this Contract, Owner shall defend, indemnify, and hold harmless Contractor and its Subcontractors, and all their respective employees, Affiliates, agents, officers, partners and directors from and against all third party claims, or Losses for bodily injury or property damage that arise out of or result from the sole negligence of Owner.

25.2 By Contractor. Except for matters expressly made Owner's responsibility hereunder and in addition to any other indemnification obligations of Contractor under this Contract, Contractor shall defend, indemnify, and hold harmless Owner and any Person acting for or on behalf of Owner and their respective employees, agents, partners, Affiliates, shareholders, directors, officers, and permitted assigns, from and against all Losses that directly or indirectly:

- (a) Arise out of or result from the prosecution of the Work by Contractor (including its Subcontractors) that arise out of or result from any acts or omissions (including strict liability) of Contractor, its agents, servants, employees or by the agents, servants or employees of any Subcontractors;
- (b) Arise out of or result from the failure of Contractor or Subcontractors to comply with Applicable Laws or the conditions or provisions of Applicable Permits;
- (c) Arise out of any insurance policy procured under Article 23 being vitiated as a result of Contractor's failure to comply with any of the requirements set forth in such policy or any other act by Contractor or any Subcontractor;
- (d) Arise out of or result from Contractor's failure to comply with its obligations under this Contract with respect to Hazardous Materials; or
- (e) Arise from any other breach by Contractor of its representations, warranties and obligations (including any other indemnification provision) under this Contract.

25.3 Actions by Government Authorities. Contractor shall defend, indemnify, and hold Owner and their respective employees, agents, partners, Affiliates, shareholders, directors, officers, and assigns harmless from and against all claims by any Governmental Authority claiming Taxes or other obligations that are Contractor's responsibility pursuant to Section 6.2 and Section 6.3, including Taxes based on gross receipts or income of Contractor, any of its Subcontractors, or any of their respective agents or employees with respect to any payment for the Work made to or earned by Contractor, any of its Subcontractors, or any of their respective agents or employees under this Contract.

25.4 Notice; Defense; Settlement. An indemnitee under this Article 25 or any other indemnification provision set forth in the Contract shall, within ten (10) Business Days after the receipt of written notice of the commencement of any legal action or of any claims against such indemnitee in respect of which indemnification will be sought, notify the indemnitor with a written notice thereof. Failure of the indemnitee to give such written notice will reduce the liability of the indemnitor by the amount of damages attributable to the failure of the indemnitee to give such written notice to the indemnitor, but the failure so to notify shall not relieve the indemnitor from any liability that it may have to such indemnitee otherwise than under the indemnity agreements contained in this Article 25. In case any such claim or legal action shall be made or brought against an indemnitee and such indemnitee shall notify the indemnitor thereof, the indemnitor may, or if so requested by such indemnitee shall, assume the defense thereof, without any reservation of rights. After written notice from the indemnitor to such indemnitee of an election to assume the defense thereof and approval by the indemnitee of counsel selected by the indemnitor, the indemnitor will not be liable to such indemnitee under this Article 25 for any legal fees or expenses subsequently incurred by such indemnitee in connection

with the defense thereof so long as the indemnitor continues to provide such defense. No indemnitee shall settle any indemnified claim over which the indemnitor has not been afforded the opportunity to assume the defense without the indemnitor's written approval. The indemnitor shall control the settlement of all claims over which it has assumed the defense; provided, however, that the indemnitor shall not conclude any settlement that requires any action or forbearance from action by the indemnitee or any of its Affiliates without the prior written approval of the indemnitee. The indemnitee shall provide reasonable assistance to the indemnitor, at the indemnitor's expense, in connection with such legal action or claim. If the indemnitor assumes the defense of any such claim or legal action, any indemnitee shall have the right to employ separate counsel in such claim or legal action and participate therein, and the reasonable fees and expenses of such counsel shall be at the expense of such indemnitee, except that such fees and expenses shall be for the account of the indemnitor if: (a) the employment of such counsel has been specifically authorized by the indemnitor; or (b) the named parties to such action (including any impleaded parties) include both such indemnitee and the indemnitor and representation of such indemnitee and the indemnitor by the same counsel would, in the reasonable opinion of the indemnitee, be inappropriate under applicable standards of professional conduct due to actual or potential conflicting interests between them. Notwithstanding anything to the contrary in this Section 25.4, the indemnitee shall have the right, at its expense, to retain counsel to monitor and consult with indemnitor's counsel in connection with any such legal action or claim.

26. PATENT INFRINGEMENT AND OTHER INDEMNIFICATION RIGHTS

26.1 Indemnity by Contractor. Contractor shall defend, indemnify, and hold harmless Owner and its employees, partners, directors, officers and assigns against all Losses arising from any claim or legal action for unauthorized disclosure or use of any trade secrets, or of patent, copyright, or trademark infringement arising from Contractor's performance (or that of its Affiliates or Subcontractors) under this Contract or otherwise asserted against Owner that either: (a) concerns any Equipment, materials, supplies, or other items provided by Contractor, any of its Affiliates, or any Subcontractor under this Contract; (b) is based upon or arises out of the performance of the Work by Contractor, any of its Affiliates, or any Subcontractor, including the use of any tools or other implements of construction by Contractor, any of its Affiliates, or any Subcontractor; (c) is based upon or arises out of the design or construction of any item by Contractor under this Contract or the operation of any item according to directions embodied in Contractor's final process design, or any revision thereof, prepared or approved by Contractor; or (d) affects the Owner's ability to operate the Project.

26.2 Lawsuits. If such claim or legal action for such infringement results in a suit against Owner the provisions of Section 25.4 shall apply.

26.3 Injunction. If Owner is enjoined from completion of the Project or any part thereof, or from the use, operation, or enjoyment of the Project or any part thereof, as a result of such claim or legal action or any litigation based thereon, Contractor shall promptly use its best efforts to have such injunction removed at no cost to Owner. If any such claim, suit or proceeding, the Project or any part, combination or process thereof is

alleged to or is held to constitute an infringement and its use is permanently enjoined, Contractor shall at its own expense and without impairing performance requirements, (1) procure for Owner the right to use the infringing Work, (2) if (1) is not commercially feasible, modify the infringing Work or part, combination or process thereof so they become non-infringing, or (3) if (1) and (2) are not commercially feasible, replace the infringing Work or part, combination or process thereof with non-infringing components or parts, provided such modification or replacement shall not diminish or alter the features of or the functionality of the Work.

26.4 Effect of Owner's Actions. Owner's acceptance of the Contractor Deliverables or proposed or supplied materials and Equipment shall not be construed to relieve Contractor of any obligation hereunder.

27. CONFIDENTIAL INFORMATION; TITLE TO INTELLECTUAL PROPERTY

27.1. Confidential Information.

27.1.1 Any Confidential Information is disclosed in confidence, and the transferee shall restrict its use of such information solely to uses related to the Project or performance of this Contract. Neither the transferee nor any consultant or other Person to whom any confidential or proprietary information is provided in connection with the Project or performance of this Contract shall publish or otherwise disclose such information to others or use such information for any purpose except as expressly provided above without the written approval of the transferor; provided, however, that nothing herein shall limit: (a) the right of Owner to provide any information regarding Contractor, any Subcontractor, this Contract, or the Work to any financing entity (or advisors retained on their behalf) or their successors and assigns or to any potential or actual successor in interest or to a purchaser of a Party's assets to which this Contract relates (provided, however, that such disclosures shall be subject to the agreement of such Persons to keep such information confidential pursuant to the terms of this Section 27.1); (b) the right of either Party to supply such information to any Governmental Authority asserting a right to such information, or as may be required by Applicable Laws; or (c) the right of Owner to disclose, reproduce and/or use as many copies of any information or documents provided to Owner as Owner in its sole discretion considers useful or necessary for the furtherance of the Work or in connection with the operation, maintenance or repair of the Project, regardless of any notices, legends, or disclaimers on such information or documents.

BES Cyber System Information. Confidential Information of Owner labeled as BCSI shall be protected consistent with the following requirements: (a) BCSI shall be protected at all times, either by appropriate storage or having it under the personal observation and control of a person authorized to receive it; (b) each person who works with protected BCSI is personally responsible for taking proper precautions to ensure that unauthorized persons do not gain access to it; (c) reasonable steps shall be taken to minimize the risks of access to BCSI by unauthorized personnel (when not in use, BCSI shall be secured in a secure

container, such as a locked desk, file cabinet or facility where security is provided); (d) documents or material containing BCSI may be reproduced to the minimum extent necessary, consistent with the need to carry out the Work, provided that the reproduced material is marked and protected in the same manner as the original material; (e) material containing BCSI should be disposed of through secured shredding receptacles or other secured document destruction methods; (f) BCSI shall be transmitted only by the following means: (i) hand delivery; (ii) United States first class, express, certified or registered mail, bonded courier, or through secure electronic means; (iii) e-mail with encrypted file (such as, WinZip with password) (the password should not be included in e-mail, but should be delivered by phone or in an unrelated e-mail not mentioning the document name; password-protected Microsoft Office documents do not meet the encryption requirements); and (g) documents or material containing BCSI shall be returned to Owner or certified destroyed upon completion of the Work.

27.1.2 Notwithstanding the designation of any information as proprietary by a transferor, such information shall not be deemed proprietary or confidential if it: (a) was furnished by such Party prior to the execution of this Contract without restrictions; (b) becomes knowledge available within the public domain; (c) is received by either Party from a third party without restriction and without breach of this Contract; or (d) is or becomes generally available to, or is independently known to or has been or is developed by, either Party or any of its Affiliates other than solely as a result of any disclosure of proprietary information by the transferor to the transferee.

Title to the Confidential Information shall remain with the owner of such Confidential Information.

27.2 Title to Contractor Deliverables. All Contractor Deliverables and other documents to be furnished to Owner by Contractor or by any Subcontractor or Vendor and all modifications made by Contractor to any documents obtained, developed or created exclusively for the Project by or for Contractor shall be the property of Owner. Notwithstanding the foregoing, to the extent Contractor furnishes standard Equipment manuals or similar materials not created specifically in connection with the Work, Owner shall obtain ownership only of the copies actually furnished and shall not hold the copyright thereto. Contractor shall retain the ownership of intellectual property rights in its standard drawing details, designs, specifications, databases, computer software and any other proprietary property.

28. INVENTIONS AND LICENSES

Contractor agrees to grant and hereby grants to Owner an irrevocable, non-exclusive, royalty-free license with respect to all Confidential Information, patents and other proprietary information of Contractor or any Subcontractor related to the Work now or hereafter owned or controlled by Contractor or a Subcontractor to the extent reasonably necessary for the operation, maintenance, repair, or alteration of the Project or any subsystem or component thereof designed, specified, or constructed by Contractor under

this Contract or in connection with any of Owner's electric transmission operations. No other license in such Confidential Information, patents and proprietary information is granted pursuant to this Contract.

29. ASSIGNMENT BY OWNER

Without the prior consent of Contractor, Owner may, upon Notice to Contractor, assign all or part of its right, title, and interest in this Contract and/or the Work to any Affiliate. In addition, without the prior consent of Contractor, Owner may, upon Notice to Contractor, assign all or part of its right, title, and interest in this Contract and/or Work to any Person that acquires the part of the Transmission Grid to which the Project is a part, whether by sale, merger or other means of transfer. Owner may assign all or part of its right, title, and interest in this Contract to any other Person with the prior written approval of Contractor, which approval shall not be unreasonably withheld or delayed; and upon such assignment the Owner shall be relieved of all of its obligations hereunder.

30. ASSIGNMENT BY CONTRACTOR

Contractor understands that this Contract is personal to Contractor. Contractor shall have no right, power, or authority to assign or delegate this Contract or any portion thereof, either voluntarily or involuntarily, or by operation of law. Contractor's attempted assignment or delegation of any of its work hereunder shall be null and void and shall be ineffective to relieve Contractor of its responsibility for the Work assigned or delegated.

31. INDEPENDENT CONTRACTOR

31.1 General. Contractor is an independent contractor, and nothing contained herein shall be construed as constituting any relationship with Owner other than that of owner and independent contractor, or as creating any relationship whatsoever between Owner and Contractor's employees. Neither Contractor nor any of its employees is or shall be deemed to be an employee of Owner.

31.2 Employees. Subject to Section 4.5, Section 4.16 and Section 10.1, Contractor has sole authority and responsibility to employ, discharge, and otherwise control its employees and Subcontractors.

32. NON-PAYMENT CLAIMS

Contractor shall provide Owner, upon Owner's request, copies of any preliminary notices filed with Governmental Authorities and any other similar notices received from any of its Subcontractors related to Work or the Project. If requested by Owner, Contractor shall promptly file a "notice of completion" or similar document with the appropriate Governmental Authority as allowed by Applicable Law.

Contractor shall indemnify and hold harmless Owner and Affiliates (collectively, the "Lien Indemnitees") and defend each of them from and against any and all Losses arising out of any and all claims for payment, whether or not reduced to a lien or mechanic's

lien, filed by Contractor (except as permitted pursuant to the final sentence of this Article 32) or any Subcontractor, or other Persons performing any portion of the Work, including reasonable attorneys' fees and expenses incurred by any Lien Indemnatee in discharging any such liens or similar encumbrances. If Contractor shall fail to discharge, bond around or otherwise dispatch in a manner reasonably satisfactory to Owner promptly any such lien or claim filed against the Project or any interest therein, upon any materials, Equipment, or structures encompassed therein, or upon the Site and/or premises upon which they are located, any Lien Indemnatee may so notify Contractor in writing, and Contractor shall then: (a) satisfy all such liens and claims; or (b) defend Lien Indemnitees against all such liens or claims and provide assurances of payment as described in the second to last sentence of this Article 32. If Contractor does not promptly satisfy such liens or claims, give such Lien Indemnatee reasons in writing that are satisfactory to such Lien Indemnatee for not causing the release of such liens or paying such claims, or contest such liens or claims in accordance with the provisions of the second to last sentence of this Article 32, any Lien Indemnatee shall have the right, at its option, after written notification to Contractor, to cause the release of, pay, or settle such liens or claims, and Owner at its sole option may (i) require Contractor to pay, within five (5) days after request by Owner; or (ii) offset against any retainage or other amounts due or to become due to Contractor (in which case Owner shall, if it is not the applicable Lien Indemnatee, pay such amounts directly to the Lien Indemnatee causing the release, payment, or settlement of such liens or claims) all costs and expenses incurred by the Lien Indemnatee in causing the release of, paying, or settling such liens or claims, including administrative costs, attorneys' fees, and other expenses. Contractor shall have the right to contest any such lien, provided it first provides to Owner a bond or other assurances of payment reasonably satisfactory to Owner in the amount of such lien and in form and substance reasonably satisfactory to Owner. Notwithstanding any provision of this Contract to the contrary, nothing herein shall affect Contractor's right to file or otherwise place a lien on the Project, Site, and/or Work (including a mechanic's lien) as a result of the non-payment by Owner of any undisputed amount owed to Contractor hereunder.

33. NOTICES AND COMMUNICATIONS

33.1 Requirements. Any Notice pursuant to the terms and conditions of this Contract shall be in writing and: (a) delivered personally, (b) sent by certified mail, return receipt requested, or (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, to the following addresses:

If to Contractor: Telephone:
 Attention:

With a copy to:

Attention:
Telephone:

If to Owner:

With a copy to:

33.2 Effective Time. Notices shall be effective when received by the other Party.

33.3 Representatives. Any technical or other communications pertaining to the Work shall be with the Parties' designated representative. Each Party shall give Notice to the other of the names of such representatives. The Project Manager and the Project Representative shall each have knowledge of the Work and be available at all reasonable times for consultation. Each Party's representative shall be authorized on behalf of such Party to administer this Contract, agree upon procedures for coordinating the efforts of Owner and Contractor, and, when appropriate, to furnish information to or receive information from the other Party in matters concerning the Work.

34. INTENTIONALLY OMITTED

35. LIMITATIONS OF LIABILITY AND REMEDIES

35.1 Limitations on Damages. Except for the Delay Liquidated Damages payable under Article 16, and the Maximum Aggregate Liquidated Damages payable under Section 20.3, and each Party's respective indemnity obligations for third party Losses under Article 25, Article 26, and any other provision in this Contract imposing indemnification obligations, and notwithstanding anything else in this Contract to the contrary, neither Party nor its Affiliates shall be liable to the other for any indirect, punitive, consequential or special damages or lost profits, lost revenue or loss of use of the Project, or cost of purchase or replacement power, whether foreseen or not, arising from a failure to perform any obligation under this Contract, whether such liability arises in contract, tort (including negligence or strict liability), statutory or otherwise. This Section 35.1 shall

not be construed to limit recovery for any Losses under any indemnity in this Contract, included Article 25 and Article 26.

35.2 Parent Guaranty and Letter of Credit.

(a) Parent Guaranty. All of Contractor's obligations under this Contract shall be secured by the Parent Guaranty's. Contractor shall deliver the Parent Guaranty's (duly executed by the party thereto) to Owner contemporaneously with Contractor's execution of this Contract.

(b) Letters of Credit.

(1) Performance LOC. Contractor shall deliver such Performance LOC to Owner within five (5) days after the Effective Date and such delivery shall be a condition precedent to Owner's further obligations hereunder. The Performance LOC shall terminate sixty (60) days after the Substantial Completion Date, provided Contractor has delivered to Owner a Warranty LOC in accordance with Section 35.2(b)(2).

(2) Warranty LOC. The Warranty LOC shall be provided to Owner on or prior to sixty (60) days after the Substantial Completion Date and Owner shall not be entitled to draw under such Warranty LOC unless and until the Performance LOC has been cancelled or terminated in accordance with subpart (1) above. The Warranty LOC shall be cancelled on the date 60 months after the Substantial Completion Date.

(3) General Terms. The Contractor shall maintain each of the Performance LOC, the Retainage LOC and the Warranty LOC in full force and effect at all times as required hereunder. If, at any time, any Letter of Credit ceases to satisfy the requirements set forth in this Contract, then the Contractor shall upon four (4) Business Days Notice from Owner deliver a replacement Letter of Credit that complies with the requirements of this Contract, unless Owner has drawn any portion or the entire amount of the Letter of Credit pursuant to Section 35.2(b).

(4) Draw Conditions. Owner shall be entitled to make a demand under a Letter of Credit one or more times in amount(s) not to exceed the stated value of the Letter of Credit. Owner may draw on a Letter of Credit, and may draw multiple times, in amount(s) not to exceed the stated value of the Letter of Credit in Owner's sole discretion, in accordance with the terms of each such Letter of Credit.

(5) Improper Draws. Notwithstanding any other provision of this Contract, if Owner draws on a Letter of Credit in violation of the requirements of this Contract, Owner shall reimburse the Contractor within two (2) Business Days for such wrongfully demanded payment or wrongfully retained portion of a payment properly demanded, plus interest at the Contract Rate, and, if the

improperly drawn upon Letter of Credit is still outstanding or required to be outstanding, the Contractor promptly shall cause such reimbursed amount to be again available for demand thereunder.

(6) Return of Letters of Credit. If the Contractor delivers to Owner a replacement for any Letter of Credit or (ii) the relevant Letter of Credit shall have terminated in accordance with the terms of this Contract, then Owner shall immediately return the relevant Letter of Credit then in Owner's possession to the issuing bank or Contractor for cancellation.

(7) Transfer by Owner of Letter of Credit. All bank administrative fees associated with and imposed by the issuer of the Letter Credit in connection with the transfer by Owner of a Letter of Credit shall be paid by the Owner.

(8) Failure to Renew or Maintain. Contractor shall be in breach of this Contract if Contractor has not renewed or replaced a Letter of Credit required to be provided hereunder no later than twenty-one (21) days prior to the stated expiration date for, or required renewal or replacement date of, such Letter of Credit; and upon Contractor's failure to so renew or replace the Owner shall have the right to draw down the entire amount of such Letter of Credit.

- (c) Contractor shall be in breach of this Contract if Contractor has not provided and maintained any Parent Guaranty or Letter of Credit as required by this Contract and upon Contractor's failure to so provide and maintain in accordance with the terms of this Contract, Owner shall have the right to draw down the entire amount of the Letter of Credits. If after any such draw by Owner, the Contractor provides a Letter of Credit satisfying the requirements of this Contract, the Owner shall within ten (10) Business Days return all previously unapplied proceeds to the Contractor.

35.3 Limitations on Contractor's Liability.

35.3.1 Aggregate Liability and Exclusions. In no event shall Contractor's liability pursuant to this Contract, whether arising in contract, warranty, default or otherwise, be greater in the aggregate than an amount equal to one hundred percent (100%) of the Contract Price; provided, however, that nothing contained in this Section 35.3 or in any other provision of this Contract shall be construed to limit Contractor's liabilities for its obligations: (a) with respect to termination, cancellation or non-renewal (or other loss of coverage) of any insurance policy as set forth in Section 25.2(c) of the Contract; (b) with respect to any gross negligence or willful misconduct or fraud on the part of Contractor; or (c) with respect to any of Contractor's indemnity obligations under Article 25, Article 26, and any other provision in this Contract imposing indemnification obligations.

Notwithstanding anything herein to the contrary, no: (i) liabilities of Contractor to Owner paid for by insurance carried by Contractor pursuant to Article 23 of this

Contract or by Owner (except deductibles paid by Contractor); or (ii) the cost of warranty Work performed by any Subcontractor at such Subcontractor's expense and the cost of any warranty Work paid for by any Subcontractor or recovered by Contractor from any Subcontractor shall be included in Contractor's aggregate liability for the purposes of determining the limit on Contractor's liability pursuant to this Contract.

35.3.2 Maximum Delay Liquidated Damages Amounts. Notwithstanding any other provisions in this Contract to the contrary, in no event shall Contractor's aggregate liability under Section 16.1 for Delay Liquidated Damages exceed the Maximum Aggregate Liquidated Damages.

35.4 Limitation on Owner's Liability. In no event shall the aggregate damages payable by Owner hereunder exceed the Contract Price (as the same may be modified by Changes in Work in accordance with the terms of this Contract); provided, however, that nothing contained in this Section 35.4 or in any other provision of this Contract shall be construed to limit Owner's liabilities for its obligations with respect to any of Owner's indemnity obligations for third party Losses under Article 25 and any other provision in this Contract imposing indemnification obligations. Notwithstanding anything herein to the contrary, no liabilities of Owner to Contractor covered by insurance carried by Owner pursuant to Article 23 of this Contract or by Contractor (except deductibles paid by Owner) shall be included in Owner's aggregate liability for purposes of determining the limit on Owner's liability pursuant to this Contract.

35.5 Releases, Indemnities and Limitations. Releases, indemnities, or limitations on liability expressed in this Contract shall apply in accordance with the terms of this Contract, notwithstanding other legal bases of responsibility such as negligence, strict liability, fault, or breach of contract of the Party indemnified or whose liability is released or limited.

36. DISPUTES

36.1 Negotiations. Any disputes arising pursuant to this Contract that cannot be resolved between Owner's Project Representative and Contractor's Project Manager within fourteen (14) days or, in the case of payment disputes, three (3) Business Days after receipt by each thereof of Notice of such dispute (specifically referencing this Section 36.1) shall be referred, by Notice signed by Owner's Project Representative and Contractor's Project Manager, to the executive officers of the Parties designated in Section 37.4 as their designated representatives (which shall not be the Owner's Project Representative or the Contractor's Project Manager) for resolution.

If the Parties, negotiating in good faith, fail to reach an agreement within a reasonable period of time, not exceeding twenty (20) days or, in the case of payment disputes, ten (10) days after such referral, then Owner or Contractor may institute proceedings as set forth in Section 36.2.

36.2 Dispute Resolution. If the Parties, negotiating in good faith, fail to reach an agreement within the period of time set forth above in Section 36.1, then Owner and Contractor agree that any and all disputes arising from, relating to or in connection with the Contract, whether based on contract, tort or otherwise shall be submitted to the jurisdiction of the federal or state courts located in Utah, to the exclusion of any and all other courts, forums, venues, and the Parties waive any and all right to contest the exclusivity of such forum, including any rights based upon the doctrine of forum non conveniens.

36.3 Work to Continue. Unless otherwise agreed in writing, Contractor shall diligently carry on the Work and shall not interfere with, restrict or discourage the prompt completion of any portion of the Work, the correction of any Defects or the provision of any warranty service during of the pendency of any dispute proceedings, as required under the terms of this Contract, and Owner shall continue to make undisputed payments and perform its obligations under this Contract; provided that, during the pendency of any dispute proceeding, amounts constituting Delay Liquidated Damages shall be paid and no set-off against such amounts shall be taken by Contractor and, to the extent Delay Liquidated Damages are unpaid, Owner may exercise its set-off rights pursuant to Section 37.17.

37. MISCELLANEOUS

37.1 Severability. The invalidity or unenforceability of any portion or provision of this Contract shall in no way affect the validity or enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be deemed severed from this Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain such invalid or unenforceable portion or provision. If any such provision of this Contract is so declared invalid, the Parties shall promptly negotiate in good faith new provisions to eliminate such invalidity and to restore this Contract as near as possible to its original intent and effect.

37.2 Governing Law. This Contract shall be governed by and interpreted in accordance with the internal laws of the state of ____ excluding its conflict of laws provisions. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS CONTRACT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. IF A WAIVER OF JURY TRIAL IS DEEMED BY ANY COURT OF COMPETENT JURISDICTION TO NOT BE ENFORCEABLE FOR ANY REASON, THEN TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO AGREE TO BINDING ARBITRATION. SUCH ARBITRATION SHALL BE IN ACCORDANCE WITH THE RULES AND PROCEDURES OF THE AMERICAN ARBITRATION ASSOCIATION (AAA). NOTWITHSTANDING ANY AAA RULES AND PROCEDURES OR ANY OTHER PROVISIONS OR ANY STATE OR FEDERAL LAWS, THE PARTIES

AGREE THAT THE ARBITRATORS SHALL NOT CONSIDER OR AWARD PUNITIVE DAMAGES AS A REMEDY. UPON THE OWNER'S REQUEST, AAA SHALL PROVIDE THE PARTIES A LIST OF ARBITRATORS EACH OF WHOM HAVE EXPERIENCE AND EXPERTISE WITH RESPECT TO CONSTRUCTION. UPON EACH OF THE PARTIES RECEIPT OF SUCH LIST, EACH PARTY SHALL HAVE TEN (10) DAYS TO SELECT AN ARBITRATOR. THE TWO SELECTED ARBITRATORS SHALL THEN SELECT A THIRD ARBITRATOR WITHIN THIRTY (30) DAYS FROM THE DATE THE INITIAL TWO ARBITRATORS WERE SELECTED AND THE MATTER SUBJECT TO ARBITRATION SHALL BE ARBITRATED WITHIN ONE HUNDRED EIGHTY (180) DAYS AFTER THE SELECTION OF THE THIRD ARBITRATOR.

37.3 Survival of Termination. The representations, warranties, rights and obligations of the Parties and any other provisions of this Contract which by their nature are intended to survive the termination or expiration of this Contract shall continue in force and effect beyond the expiration or termination of this Contract and shall inure to the benefit of the Parties.

37.4 No Oral Modification. No oral or written amendment or modification of this Contract (including a Change in Work Form accepted under Article 17) by any officer, agent, or employee of Contractor or Owner, either before or after execution of this Contract, shall be of any force or effect unless such amendment or modification or Change in Work Form is in writing and is signed by any President, any Vice President or the Chief Executive Officer of the Party (or of the managing member of the Party on behalf of the Party) to be bound thereby.

37.5 No Waiver. Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions, or other provisions of this Contract at any time shall not in any way affect, limit, modify, or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition, or other provision hereof, any course of dealing or custom of the trade notwithstanding. All waivers must be in writing and signed on behalf of Owner and Contractor by the individuals identified in Section 37.4.

37.1. Time of Essence. Time is of the essence with respect to the performance by Contractor of its obligations under this Contract.

37.2. Contract Interest Rate. Overdue undisputed payment obligations of the Owner and the Contractor hereunder shall bear interest from the date due until the date paid at a rate per annum equal to the lesser of: (a) Prime Rate in effect from time to time plus three percent (3%); and (b) the highest rate permitted by Applicable Laws.

37.3. Headings for Convenience Only. The headings contained herein are not part of this Contract and are included solely for the convenience of the Parties.

37.4. Third-Party Beneficiaries. The provisions of this Contract are intended for the sole benefit of Owner and Contractor and there are no third party beneficiaries hereof,

except where otherwise expressly provided, other than assignees contemplated by the terms herein.

37.5. Language. The language of this Contract is the English language, which shall be the ruling language in which the Contract shall be construed and interpreted. All correspondence, Drawings and Specifications, Contractor Deliverables, test reports, Notices, certificates, Required Manuals and other information shall be entirely in the English language.

37.6. Drafting Interpretations. Preparation of this Contract has been a joint effort of the Parties and the resulting documents shall not be construed more severely against one of the Parties than against the other.

37.7. Further Assurances. Owner and Contractor will each use reasonable efforts to implement the provisions of this Contract, and for such purpose each, at the request of the other, will, without further consideration, promptly execute and deliver or cause to be executed and delivered to the other such assistance, or assignments, consents or other instruments in addition to those required by this Contract, in form and substance satisfactory to the other, as the other may reasonably deem necessary or desirable to implement any provision of this Contract. Additionally, in the event that either Party has reasonable cause to suspect that the other Party's ability to perform its respective obligations under this Contract has been substantially impaired, the impaired Party shall upon request, provide the requesting Party with reasonably adequate assurance of its intention and ability to continue its performance as required by this Contract.

37.8. Record Retention. Contractor agrees to retain for a period of seven (7) years from the Final Completion Date or any longer period as may be required by Applicable Laws all records relating to its performance of the Work or Contractor's warranty obligations herein, and agrees to cause all Subcontractors engaged in connection with the Work or the performance by Contractor of its warranty obligations herein to retain for the same period all their records relating to the Work.

37.9. Binding on Successors. This Contract shall be binding on the Parties hereto and on their respective successors, heirs and permitted assigns.

37.10. Merger of Prior Contracts. This Contract supersedes any other agreement, whether written or oral, that may have been made or entered into between Owner and Contractor or by any officer or officers of such Parties relating to the Project or the Work. This Contract and Exhibits hereto constitutes the entire agreement between the Parties with respect to the Project, and there are no other agreements or commitments with respect to the Project except as set forth herein.

37.11. Counterpart Execution. This Contract may be executed by the Parties hereto in any number of counterparts (and by each of the Parties hereto on separate counterparts), each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

37.12. Set-Off. Either Party may at any time, but shall be under no obligation to, set off any and all sums due from the other Party against sums due to such Party hereunder.

37.13. Further Information. To the extent Contractor does not file financial statements with the United States Security and Exchange Commission, the Contractor agrees from time to time to provide the Owner such information and documents (financial or otherwise) regarding the Contractor as the Owner may reasonable request at Contractor's cost and expense.

38. NERC CIPS COMPLIANCE

38.1 In the event that the Work under this Contract requires any (i) authorized unescorted physical access to Owner's Facilities (i.e., Unescorted Personnel), or (ii) authorized unescorted physical access or authorized cyber access to Owner's CIP Covered Assets (i.e., Sensitive Personnel), Contractor, Unescorted Personnel, and Sensitive Personnel shall be required to comply with North American Electric Reliability Corporation ("NERC") Critical Infrastructure Protection Standards ("CIPS"), as adopted by Owner and attached hereto as Exhibit "S", Background Check Criteria – NERC / CIPS Standards. For all Unescorted Personnel and Sensitive Personnel, Contractor shall:

- (a) Ensure that Unescorted Personnel and Sensitive Personnel have passed the background checks outlined in Section 38.3(a) consistent with the Owner's Background Check Criteria set forth on Exhibit "S" prior to requesting unescorted physical access and/or cyber access to Owner's Facilities and/or CIPS Covered Assets, as applicable;
- (b) Ensure that Unescorted Personnel and Sensitive Personnel complete Owner provided or approved initial CIPS compliance training prior to requesting unescorted physical access and/or cyber access to Owner's Facilities and/or CIPS Covered Assets, as applicable;
- (c) Ensure that Unescorted Personnel and Sensitive Personnel have passed Contractor's drug and alcohol exam and are in compliance with Contractor's substance abuse/drug and alcohol policy as outlined in Section 38.5; and
- (d) Keep accurate and detailed documentation to confirm completion dates for background checks, all CIPS compliance training (initial and annual training, to the extent applicable), and drug tests, and certify to Owner such documentation by completing a Contractor/Vendor Information Form, attached as part of Exhibit "S" hereto, for each Unescorted Personnel and Sensitive Personnel.

Contractor shall not allow any Unescorted Personnel or Sensitive Personnel who have not met the foregoing requirements of this Section 38.1 to perform Work, unless Contractor has received prior written consent from Owner.

38.2 Additional Access Requirements Specific to Sensitive Personnel. In addition to the access requirements outlined in Section 38.1, with respect to all Sensitive Personnel, Contractor also shall:

- (a) Ensure that Sensitive Personnel and any Personnel with access to BCSI are informed of and comply with the requirements of Article 27 contained herein, as well as the requirements set forth herein;
- (b) In addition to the initial CIPS compliance training requirement outlined in Section 38.1(b), ensure that Sensitive Personnel complete Owner provided or approved supplemental CIPS compliance training within Owner's prescribed training window, and not less than on an annual basis; and
- (c) Immediately report both (i) Sensitive Personnel terminations for cause, and (ii) all other Sensitive Personnel terminations or changes in employment status for those who no longer require access, to Owner's Enterprise Service Desk ("ESD"). The ESD is available by calling the Project Representative.

Contractor shall not allow any Sensitive Personnel who have not met the foregoing requirements of this Section 38.2 to perform Work, unless Contractor has received prior written consent from Owner.

38.3 Personnel Screening/Background Check Requirements. For all Unescorted Personnel and Sensitive Personnel, the following requirements must be met by Contractor:

- (a) Contractor shall conduct, at Contractor's cost and expense, the requisite background checks for the current and past countries of residence of all Unescorted Personnel and Sensitive Personnel consistent with Owner's Background Check Criteria set forth on Exhibit "S". All background checks will be conducted in accordance with federal, state, provincial, and local laws, and subject to existing collective bargaining unit agreements or other agreements, if any;
- (b) Following the initial background check to obtain authorization for access, the background checks shall be updated no less frequently than every seven (7) years or upon request by Owner, and shall, at a minimum, consist of a social security number identity verification and seven (7) year criminal background check, including all convictions for a crime punishable by imprisonment for a term exceeding one (1) year;
- (c) Contractor shall ensure that each of the Unescorted Personnel and Sensitive Personnel sign an appropriate authorization form prior to background checks being conducted, acknowledging that the background check is being conducted, and authorizing the information obtained to be provided to Owner;
- (d) Owner has the right to audit Contractor's records supporting each Contractor/Vendor Information Form submitted to Owner, including background check results, and to verify that the requisite background checks and drug tests were performed consistent with Owner's Background Check

Criteria, set forth on Exhibit "S". Contractor shall provide Owner with all requested records supporting Contractor/Vendor Information Forms within a reasonable time after receiving such request, and in the form requested by Owner, but not longer than three (3) Business Days following the date of such request;

- (e) For purposes of this Contract, a background check is considered valid pursuant to the Owner's Background Check Criteria, set forth on Exhibit "S", if it was completed within two (2) years prior to the date on which the Contractor signed a Contractor/Vendor Information Form for each Unescorted Personnel and Sensitive Personnel. Regardless of when performed, all background checks shall be documented pursuant to the requirements set forth in this Section 38.3; and
- (f) In the event Owner notifies Contractor of the impending expiration of the background check of any Unescorted Personnel or Sensitive Personnel, Contractor shall provide an updated Contractor/Vendor Information Form reflecting a refreshed background check within twenty (20) days of receipt of the notice, in order to avoid revocation of such person's access.

38.4 Contractor Designee. Contractor shall designate one person to be responsible for compliance with the requirements of this Article 38, and all reporting and inquiries, other than Sensitive Personnel terminations or changes in employment status, shall be made via e-mail to Project Representative. Sensitive Personnel terminations or changes in employment status should be reported to the ESD pursuant to Section 38.2(c).

38.5 Drug Testing.

- (a) Contractor shall have and ensure compliance with a substance abuse/drug and alcohol policy that complies with all applicable federal, provincial and/or local statutes or regulations. Contractor shall subject each of the Personnel to a drug test at Contractor's sole cost and expense. Such drug test shall, at a minimum, be a five (5) Panel Drug Test, which should be recognizable at testing labs as a "SamHSA5 panel at 50NG – THC cut-off."
- (b) For any Personnel who have had a recent drug test, such recent drug test shall be documented pursuant to the previous paragraph. Contractor warrants that Contractor and the Personnel are in compliance with Contractor's substance abuse/drug and alcohol policy.
- (c) During the course of Work performed under this Contract, Contractor shall keep accurate and detailed documentation of its drug policy and Personnel drug tests, which it shall submit to Owner upon request.

- (d) Contractor shall designate one person to be responsible for compliance with the requirements of this Article 38 and all reporting and inquiries, other than Sensitive Personnel terminations or changes in employment status covered in Section 38.4, shall be made to the Project Representative in a timely manner.

38.6 Department of Transportation Compliance. Contractor shall ensure Department of Transportation compliance, including but not limited to valid driver's license, equipment inspections, hours of service and all appropriate documentation for any Personnel who may drive while on assignment to Owner.

39. CYBER SECURITY

39.1 Scope. This Cybersecurity Article (“Article”) applies to any contractor or supplier (collectively, “Contractor” for purposes of this Article) and its Personnel and Subcontractors that provide hardware, software, or services to the Owner that may impact the confidentiality, integrity, or availability of the Company’s networks, systems, software, Data, or Confidential Information for the term of the Contract.

39.2 Defined Terms.

“Confidential Information” shall have the meaning as defined in the Contract and in addition include any information that can be used to identify or distinguish the identity of an individual, employee, or customer of Company, including but not limited to name, social security number, date and place of birth, customer account number, customer address, customer energy usage information, credit or bank account number, passport or driver’s license numbers, or any information that is linked or linkable to an individual, employee, or customer that is not otherwise classified as public information by Company, including medical, financial, and employment information.

“Data” shall mean any information, formulae, algorithms, or other content that the Company or the Company’s employees, agents and end users upload, create or modify using any software provided pursuant to the Contract. Data also includes user identification information and metadata which may contain Data or from which the Company’s Data may be ascertainable.

“Security Breach” shall mean any act or omission that compromises either the security, confidentiality, or integrity of Company’s Confidential Information, Data, systems and facilities or Company’s physical, technical, administrative or organizational safeguards and controls relating to the protection of Company’s Confidential Information, Data, systems, and facilities.

Any capitalized terms not otherwise defined herein shall have the meaning in the Contract.

39.3 Cybersecurity Controls.

(a) Without limiting Contractor’s obligations elsewhere in this Article or the Contract, Contractor shall implement security safeguards and controls to protect the Company’s networks, systems, software, Data, and Confidential Information that are no less rigorous than accepted industry practices, specifically those set forth in the latest published version of ISO/IEC 27001 – *Information Security Management Systems–Requirements* and ISO/IEC 27002 – *Code of Practice for International Security Management*.

(b) Contractor agrees to notify the Company of known security vulnerabilities in hardware, software, and services provided under the Contract in a timely manner.

- (c) Contractor warrants that the hardware, software, and patches provided under the Contract will not contain malicious code. Contractor agrees to provide a method to verify the integrity and authenticity of all software and patches provided by the Contractor.
- (d) Contractor shall follow all applicable Company requirements for all remote access to Company resources and systems. To the extent Contractor's Personnel will have interactive remote access to Company's networks, systems or applications, such access must be performed on a secure connection. Contractor shall utilize multi-factor authentication provided by the Company. Authentication tokens and passwords may not be shared without written permission from the Company's Vice President, Information Technology. Immediately upon either (i) Personnel termination actions or (ii) changes in the status of Personnel which removes their need for remote access, Contractor shall report such termination or change in status to the Company's Service Desk.

39.4 Oversight of Compliance. Company reserves the right to conduct an assessment, audit, examination, or review of Contractor's security controls to confirm Contractor's adherence to the terms of this Article, as well as any applicable laws, regulations, and industry standards, not more than once per year or upon notification of any Security Breach or complaint regarding Contractor's privacy and security practices. Company may elect to obtain the services of a mutually-agreeable third party to conduct this assessment, audit, examination, or review on behalf of Company. Company shall give Contractor no less than thirty (30) calendar days' notice of its intent to conduct such assessment, audit, examination, or review. As part of this assessment, audit, examination, or review, Company may review all controls in Contractor's physical and/or technical environment in relation to all Confidential Information being handled and/or hardware, software, or services being provided pursuant to this Contract. Contractor shall fully cooperate with such assessment by providing access to knowledgeable personnel, physical premises, documentation, infrastructure, application software, and systems relevant to the provision of hardware, software, or services under the Contract.

39.5 Security Breach Procedures; Equitable Relief. In the event of Security Breach of the contractor or subcontractor affecting the Company, the Company's networks, systems, software, Data, or the Company's Confidential Information,

- (a) Contractor shall:
 - (i) notify the Company of a Security Breach as soon as practicable, but no later than 48 hours after Contractor becomes aware of it by telephone at the following number: [insert applicable company's Service Desk number]; and
 - (ii) provide the Company with the name and contact information for any Personnel who shall serve as Contractor's primary security contact and shall be available to assist the Company in resolving obligations associated with a Security Breach;

(b) Immediately following Contractor's notification to the Company of a Security Breach, the Parties shall coordinate with each other to investigate such Security Breach. Contractor agrees to coordinate with Company in Company's handling of the matter, including: (i) assisting with any investigation and (ii) making available all relevant records and other materials required to comply with applicable law, regulation, industry standards, or otherwise reasonably required by Company.

(c) Contractor shall use best efforts to immediately remedy any Security Breach and prevent any further or recurrent Security Breach at Contractor's expense in accordance with applicable privacy laws, regulations, and standards. Contractor shall reimburse Company for actual reasonable costs incurred by Company in responding to, and mitigating damages caused by, any Security Breach, including all costs of notice and/or remediation pursuant to this section.

(d) Contractor shall fully cooperate at its own expense with Company in any litigation or other formal action deemed reasonably necessary by Company to protect its rights relating to the use, disclosure, protection, and maintenance of its Confidential Information and Data.

(e) Contractor acknowledges that any breach of Contractor's obligations set forth in this Article may cause Company substantial irreparable harm for which monetary damages would not be adequate compensation and agrees that, in the event of such a breach or threatened breach, Company is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which Company may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other available remedies at law or in equity, subject to any express exclusions or limitations in the Contract to the contrary.

39.6 Network Security & Privacy Liability. If the Work under the Contract involves the rendering of IT services including, but not limited to: software, software or hardware or systems development or consulting services; internet/application services (e.g., web hosting); providing content; connections to systems, technology or network(s); or if Contractor in any way collects, obtains, maintains or in any way accesses or uses Confidential Information or Data, then Contractor, and its Subcontractors, shall maintain Network Security & Privacy Liability coverage, which can be included via evidenced endorsement to Professional Errors & Omissions coverage, throughout the term of this Contract and for a period of two (2) years thereafter, with a minimum required limit of \$5,000,000 Each Claim.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be executed as of the date and the year first above written.

OWNER:

By: _____

Name: _____

Title: _____

CONTRACTOR:

[_____]

By: _____

Name: _____

Title: _____

RFQ Copy

MASTER
CONTRACT
FOR

ENGINEERING, PROCUREMENT
AND CONSTRUCTION SERVICES

BETWEEN

[_____]

PACIFICORP TRANSMISSION PROJECTS

Dated as of

[_____]

Both Parties have caused an individual with the requisite authority to acknowledge this and each page of this Contract prior to execution.

Contractor: Initial _____

Company: Initial _____

RFQ Copy

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THIS TURNKEY CONTRACT FOR ENGINEERING, PROCUREMENT AND CONSTRUCTION SERVICES (the "Contract") is made and entered into as of _____ [201_], (the "Effective Date") by and between, PacifiCorp, an Oregon Corporation ("Owner"), and _____, ("Contractor"). Each entity is sometimes individually referred to herein as a "Party" and both entities are sometimes collectively referred to herein as the "Parties."

RECITALS

- A. Owner desires to construct, own and operate various Projects.
- B. For a particular Project, and through a particular Release, Owner desires to engage Contractor to:
- (1) following issuance of a Limited Notice to Proceed, provide the Pre-Construction Services; and
 - (2) following issuance of Full Notice to Proceed, to design, engineer, procure, construct, test and commission (as to testing and commissioning, only to the extent expressly provided in this Contract, including Exhibit "A") the Project all on a turnkey, guaranteed fixed price, guaranteed completion date basis, and Contractor desires to provide such services, all as further defined by the terms and conditions set forth in this Contract.
- C. Contractor has:
- (1) been provided and reviewed the preliminary drawings and certain specifications for the Project and other documents relating to the Project which Contractor has deemed necessary in connection with this Contract;
 - (2) inspected the real property on which the Project shall be constructed; and
 - (3) performed or reviewed such other investigations, studies, and analyses which Contractor has determined to be necessary or prudent in connection with entering into this Contract.
- D. Contractor agrees to guarantee the timely completion of the Project.

AGREEMENT

NOW, THEREFORE, in consideration of any sums to be paid to Contractor by Owner and of the covenants and agreements set forth herein, the Parties agree as follows:

1. DEFINITIONS

For purposes of this Contract, except as otherwise expressly provided or unless the context otherwise requires, the following terms shall have the following meanings. The meanings specified are applicable to both the singular and plural.

1.1. Affiliate. With respect to any Person, another Person that is controlled by, that controls or is under common control with, such Person; and, for this purpose, "control" with respect to any Person shall mean the ability to effectively control, directly or indirectly, the operations and business decisions of such Person whether by voting of securities or partnership interests or any other method.

1.2. Applicable Laws. The term means and includes all of the following:

(a) any statute, law, rule, regulation, code, ordinance, judgment, decree, writ, order or the like, of any Governmental Authority, and the interpretations thereof, including any statute, law, rule, regulation, code, ordinance, judgment, decree, writ, order or the like, regulating, relating to or imposing liability or standards of conduct concerning:

(i) Owner, Contractor, the Site, the Contractor Yard Site or the performance of any portion of the Work or the Work taken as a whole, or the operation of the Project; or

(ii) safety and the prevention of injury to Persons and damage to property on, about or adjacent to the Site or any other location where any other portion of the Work shall be performed (including the Contractor Yard Sites) or

(iii) protection of human health or the environment or emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or wastes into the environment including ambient air, surface water, ground water, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, chemicals, Hazardous Materials or other industrial, toxic materials or wastes; as now or may at any time hereafter be in effect; and

(b) Any requirements or conditions on or with respect to the issuance, maintenance or renewal of any Applicable Permit or any application therefor.

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Both Parties have caused an individual with the requisite authority to acknowledge this and each page of this Contract prior to execution.

Contractor: Initial _____

Company: Initial _____

- 1.3. Applicable Permits. Each and every national, state and local license, authorization, certification, filing, recording, permit, waiver, exception, variance, franchise, order or other approval with or of any Governmental Authority, including each and every environmental, construction, operating or occupancy permit and any agreement, consent or approval that is required by any Applicable Laws.
- 1.4. BES Cyber System Information (BCSI) shall mean information concerning CIPS Covered Assets that: (i) relates to the production, generation or transmission of energy; (ii) could be useful to a person planning an attack on critical infrastructure; and (iii) provides strategic information beyond the geographic location of the critical asset, and which is identified as BCSI by Owner. BCSI also includes any information concerning CIPS Covered Assets that has been identified by Owner as Critical Infrastructure Information (or CII).
- 1.5. Business Day. A Day, other than a Saturday or Sunday or holiday, on which banks are generally open for business in Salt Lake City, UT.
- 1.6. Cancellation Schedule. The cancellation payment schedule shall mean as set forth in Exhibit "D" as part of each Release.
- 1.7. Change in Law. The enactment, adoption, promulgation, modification, or repeal after the Effective date of each Release of any Applicable Law of any Governmental Authority of the United States or the modification after the Effective date of each Release of any Applicable Permit issued or promulgated by any Governmental Authority of the United States (that could not be reasonably anticipated on the Effective date of each Release) that establishes requirements that have a materially adverse effect on Contractor's costs or schedule for performing the Work; provided, however, neither (a) a change in any national, federal, or any other income tax law or any other law imposing a tax, duty, levy, impost, fee, royalty, or charge for which Contractor is responsible hereunder nor (b) a Change in Law that affects Contractor's or Subcontractor's costs of employment, shall constitute a Change in Law pursuant to this Contract. Section 4.15 sets out Contractor's rights in the event that an Owner Acquired Permit has not been issued or an application therefore has not been made on or prior to the Effective date of each Release.
- 1.8. Change in Work. A change in the Work as defined in Section 17.1.

1.9. Change in Work Form. The form documenting a Change in Work as attached hereto as Exhibit "E".

1.10. CIPS Covered Assets. Any assets identified by Owner as "critical assets," "critical cyber assets," "BES assets," "BES cyber assets," or "BES cyber systems," as those terms are defined in the North American Electric Reliability Corporation (NERC) Glossary of Terms. "BES" refers to the "Bulk Electric System" as defined by NERC.

1.11. Company. The term as used in the Exhibits hereto has the same meaning as the term Owner.

1.12. Confidential Information. Information, ideas or materials now or hereafter owned by or otherwise in the possession or control of, or otherwise relating to, one Party and/or any of its Affiliates, including inventions, business or trade secrets, know-how, techniques, data, reports, drawings, specifications, blueprints, flow sheets, designs, engineering, construction, environmental, operations, marketing, transmission line, substation and generating station outage schedules and other operating restrictions and conditions, or other information, together with all copies, summaries, analyses, or extracts thereof, based thereon or derived therefrom, disclosed by one Party (the "transferor") to the other Party or any of its Affiliates or any of their respective directors, employees or agents (the "transferee"); provided, however, Confidential Information of Owner shall also mean all BES Cyber System Information and any information, ideas or materials related to the Work or the Project obtained, developed or created by or for Contractor in connection with the Work, or delivered or disclosed to Owner in connection with the Work, together with all copies, reproductions, summaries, analyses, or extracts thereof, based thereon or derived therefrom; and provided, further, Confidential Information of Owner shall also mean information, ideas, or materials disclosed by Owner or any of its Affiliates, or deduced by Contractor, any Subcontractor or any of their Affiliates or any of their respective directors, employees or agents from information supplied by Owner or its Affiliates or agents, or as a result of visits by Contractor, any Subcontractor, or any of their Affiliates or any of their respective directors, employees or agents to the premises of Owner or any of its Affiliates or the Site, which relate to the Project. The terms of this Contract shall also be considered Confidential Information of the Owner.

1.13. Construction Manager. The permanent, on-Site construction manager designated by Contractor and approved by Owner in accordance with Section 4.5.

1.14. Contract. This Turnkey Contract for Engineering, Procurement and Construction Services, including all Exhibits hereto, as the same may be modified, amended, or supplemented from time to time in accordance with Article 17 and Section 37.4.

- 1.15. Contract Price. Shall mean with respect to each Release, the fixed amount for performing the Work that is payable to Contractor as set forth in Section 6.1, as the same may be modified from time to time in accordance with the terms hereof.
- 1.16. Contractor. The term has the meaning as set forth in the first paragraph of this Contract. [The JV partners shall undertake the duties and obligations of the Contractor under this Contract severally and jointly. Even though the joint venture partners have assumed the duties and obligations of Contractor under this Contract on a joint and several basis, the Contractor is referred to throughout the Contract Documents as if singular in number.] [If applicable.]
- 1.17. Contract Acquired Permits. The Applicable Permits defined in Exhibit "A", Section 17 attached to a particular Release as Contractor Acquired Permits, and any other Applicable Permits required in connection with the Project or the Work except those Applicable Permits specified in Exhibit "A", Section 17 attached to a particular Release as Owner Acquired Permits.
- 1.18. Contract Term. Shall mean the period commencing upon the execution of this Contract by Owner and continuing thereafter until December 31, 2020, unless earlier terminated as provided herein.
- 1.19. Contractor Cause. The term shall mean any of the following: (a) Contractor's unexcused delay in achieving a Project Guaranteed Date or other breach by Contractor of its obligations under this Contract, or (b) a Defect.
- 1.20. Contractor Deliverables. Each of the material documents relating to each particular Release to be delivered to Owner for review and comment in accordance with the requirements of this Contract, including Article 12; which shall include the documents set forth on the Deliverables Schedule.
- 1.21. Contractor Environmental Assurance Program. The accepted material documents provided in compliance with the requirements of Exhibit A, Section 22.
- 1.22. Contractor Event of Default. The term has the meaning set forth in Section 20.1.
- 1.23. Contractor Safety Program. The term has the meaning set forth in Section 4.11.

- 1.24. Contractor Schedule Milestones. The Contractor schedule milestones set forth on Exhibit "G" as related to each particular Release.
- 1.25. Contractor's Invoice. An invoice from Contractor to Owner in accordance with Section 7.1 and in the form of Exhibit "F" hereto.
- 1.26. Contractor Yard Sites. A site(s) in the vicinity of the Site acquired by the Contractor at its cost and used by the Contractor as a construction equipment or Equipment storage yard, a site for construction office trailers, a worker reporting location and/or other Project-related uses.
- 1.27. CPCN. The final certificate of public convenience and necessity for a particular project as issued by the relevant Governmental Authority.
- 1.28. Critical Path Item(s). With respect to each Project, any items demonstrated (with satisfactory evidence provided in accordance with Exhibit "G") to be on the critical path for the Critical Path Method Schedule prepared by Contractor in accordance with Section 4.26.
- 1.29. Critical Path Method Schedule. With respect to each Project a critical path method schedule prepared by Contractor describing the time of completion of the Work (including Critical Path Items) by Contractor, setting forth the dependencies among all Critical Path Items that affect the achievement of the Project Guaranteed Dates, meeting the requirements set forth in Exhibit "G", and developed and agreed by the Parties in accordance with Section 4.26.
- 1.30. Day or day. A calendar day, unless otherwise specified.
- 1.31. Defect. Unless otherwise specifically defined elsewhere herein, the term Defect includes any designs, engineering, materials, workmanship, Equipment, tools, supplies, installation or other Work, which:
- (a) Do not conform to the requirements of this Contract;
 - (b) Are of defective or inferior manufacture, workmanship or materials;
 - (c) Are inconsistent with Industry Standards; or
 - (d) Are not suitable for a project of this type.

- 1.32. Delay Liquidated Damages. Liquidated damages for delay as set forth in Section 16.1 for the amounts specified in each Release.
- 1.33. Delay Notice. A Notice of a Force Majeure event, and the estimated delays associated with such event, as set forth in Section 9.2.
- 1.34. Deliverables Schedule. With respect to each Release the schedule as described and to be agreed upon by the Parties in accordance with Section 12.4 that identifies the Contractor Deliverables to be delivered by Contractor, and Owner's period for review thereof, as such schedule may be updated from time to time in accordance with Section 12.4 of this Contract.
- 1.35. Design Engineering. The responsibility for design engineering including the Drawings and Specifications for each Project will be defined within each Release and may be provided by either party or any combination thereof.
- 1.36. Dollars or \$. The lawful currency of the United States of America.
- 1.37. Drawings and Specifications. With respect to each Project, Drawings, specifications and documents that are part of the Scope of Work defined in each Release or that have been or will be prepared by Owner's Engineer, Contractor or any Subcontractor with respect to the Work and submitted under this Contract (including those drawings, specifications and documents identified in the Deliverables Schedule and Exhibit "A", Section 23).
- 1.38. Effective Date. The term has the meaning as set forth in the first paragraph of this Contract.
- 1.39. Equipment. With respect to each Project, all materials, supplies, apparatus, machinery, equipment, parts, tools, components, instruments, appliances and appurtenances thereto that are: (a) required for prudent operation of the Project in accordance with Industry Standards; or (b) described in or required by this Contract, including Exhibit "A" and the Drawings and Specifications, as described within each Release.
- 1.40. Exhibits. Each exhibit listed in Section 2.1 and attached hereto and incorporated herein in its entirety by this reference.
- 1.41. Final Completion. Satisfaction by Contractor or waiver by Owner of all of the

conditions for Final Completion as set forth in Section 15.5.

1.42. Final Completion Certificate. A certificate in substantially the form as set forth in Exhibit "V" hereto.

1.43. Final Completion Date. The date on which Final Completion of each Project occurs.

1.44. Final Completion Guaranteed Date. The date specified within each Release, and as such date may be modified in accordance with Article 17.

1.45. Final Contractor's Invoice. With respect to each Project, the final invoice submitted by Contractor in accordance with Section 7.6.

1.46. Final Payment. With respect to each Project, the final payment made by Owner to Contractor in accordance with Section 7.6.

1.47. Final Release and Waiver of Liens and Claims. With respect to each Project, a sworn statement and waiver of liens prepared by Contractor and each Major Subcontractor, as applicable, which provides that such Person unconditionally waives and releases all mechanic's liens, stop notices and bond rights with respect to all Work for which Contractor requested Final Payment in the applicable form set forth in Exhibit "Z".

1.48. Force Majeure.

- (a) Any war (whether declared or not), hostilities, blockade, revolution, insurrection, riot or terrorist act; expropriation, requisition, confiscation, or nationalization; closing of harbors, docks, canals, or other assistances to or adjuncts of the shipping or navigation of or within any place; rationing or allocation as imposed by law, decree, or regulation, or by any Governmental Authorities; actions of a Governmental Authority (other than with respect to a Party's compliance with Applicable Laws and Applicable Permits required in connection with a Party's performance under this Contract); fire or explosion; unusually severe storms and unusually severe weather conditions occurring in the vicinity of the Site, including flood, lightning strikes, tornado or hurricane; unusually severe tide, tidal wave or volcano; accidents of navigation or breakdown or damage of shipping vessels, or accidents to harbors, docks or canals; epidemic or quarantine; general labor disturbances not specific to Contractor's or Subcontractor's personnel; or any other event, matter, or thing, wherever occurring and whether similar or dissimilar to any of the foregoing; provided, however, that, in each case: (i) such event, matter or circumstance is not within the reasonable control and is without the fault or negligence of, or willful misconduct of, or breach of this Contract by the Party

whose performance is affected thereby; (ii) such event, despite the exercise of commercially reasonable efforts, cannot be or be caused to be prevented, avoided or removed by such Party; and (iii) to the extent commercially reasonable, the Party affected has taken precautions and measures to avoid the effect of such event on such Party and mitigate the consequences thereof.

- (b) In relation to any labor strikes, disputes, disturbances, or other matters, the following shall not constitute Force Majeure: (i) any labor shortages involving the employees or workers of Contractor or a Subcontractor; or (ii) any labor disturbance or dispute of Contractor's and/or any Subcontractor's personnel taking place at the Site or a facility of Contractor or Subcontractor (except if such action is part of a national action).
- (c) In addition, and notwithstanding anything in this definition to the contrary, the following shall not constitute Force Majeure: (i) mechanical or Equipment failures (so long as such failure was not itself caused by an event included in part (a) of this definition); (ii) any Site Condition (so long as the delay was not itself caused by an event included in part (a) of this definition); (iii) road embargos by Governmental Entities as a result of seasonal or other weather conditions; (iv) winds of any speed (except this shall not mean a tornado or hurricane) or any seasonal or climatic weather conditions (unless such condition is unusually severe); (v) any condition described in (a) above that results in increased costs of performance but does not otherwise affect a Party's ability to perform; (vi) delays in customs clearance (so long as the delay was not itself caused by an event included in part (a) of this definition); (vii) delays, breakdowns and accident in transportation other than delays in transportation due to an event included in part (a) of this definition; and (viii) inability of employees or workers of Contractor or a Subcontractor to gain physical access to the Site or a Contractor Yard Site (so long as such inability was not itself caused by an event included in part (a) of this definition).

1.49. Foundation Completion. The term has the meaning set forth in Section 13.1.

1.50. Foundation Completion Certificate. A certificate in substantially the form as set forth in Exhibit "V" hereto.

1.51. Full Notice to Proceed. The term has the meaning set forth in Section 8.2.

1.52. Full Notice to Proceed Date. The term has the meaning set forth in Section 8.2.

1.53. Governmental Authorities. All United States and other national, federal, state, provincial and local governments and all agencies, authorities, departments, instrumentalities, courts, corporations, or other subdivisions of each having or claiming a regulatory interest in or jurisdiction over the Site, the Contractor Yard Site, the Project, the

Work or the Parties to this Contract.

- 1.54. Hazardous Materials. Any chemical, material or substance in any form, whether solid, liquid, gaseous, semisolid, or any combination thereof, whether waste material, raw material, chemical, finished product, byproduct, or any other material or article, that is defined, listed or regulated or as to which liability could be imposed, under Applicable Laws as a “hazardous” or “toxic” substance or waste or material, or as a “pollutant” or “contaminant,” (or words of similar meaning or import) or is otherwise listed or regulated under Applicable Laws, or as to which liability could be imposed, under Applicable Laws including, without limitation, petroleum products, petroleum derived substances, radioactive materials, asbestos, asbestos containing materials, polychlorinated biphenyls, urea formaldehyde foam insulation, and lead-containing paints or coatings.
- 1.55. Industry Standards. Those standards of engineering, construction, operation, workmanship, Equipment and components specified, with respect to each Release in Exhibit “A”, provided, however, that if the relevant standard is not so specified or is ambiguous therein, then Industry Standards shall mean those standards of construction, workmanship, operation, care and diligence normally practiced in the United States by nationally recognized engineering and construction firms in performing services of a similar nature and in accordance with: (a) Applicable Laws and Applicable Permits; (b) other standards and codes established for such work; and (c) those standards (including of operation) established and/or recognized as prudent utility practice in the Western United States. Industry Standards are not necessarily defined as the optimal standard, practice or method to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances. For purposes of this definition: (i) the Contractor Deliverables must comply with Industry Standards at the time that they are submitted to Owner; and (iii) the Work performed must comply with the Industry Standards at the time that it is performed.
- 1.56. Interconnection. The connection of each applicable part of the Project to the Transmission Grid such that the applicable part of the Project is energized at the nominal system operating voltage for which such part of the Project is designed as further described in Exhibit “A” and/or such that the Project delivers power and energy to energize the Project for Tests.
- 1.57. Key Personnel. The natural persons named in Exhibit “J” attached to each Release.
- 1.58. Land Rights Agreements. Those agreements and other documents or instruments with respect to the Site identified and set forth in Exhibit “A”, Section 18 attached to each Release.
- 1.59. Letter of Credit. The term shall mean the Performance LOC, the Retainage LOC (if applicable) and the Warranty LOC.

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Both Parties have caused an individual with the requisite authority to acknowledge this and each page of this Contract prior to execution.

Contractor: Initial _____

Company: Initial _____

- 1.60. Lien Indemnitees. The term has the meaning set forth in Article 32.
- 1.61. Limited Notice to Proceed. A Notice provided by Owner directing Contractor to perform Pre-Construction Services, pursuant to the provisions of Section 8.1.
- 1.62. Loss(es). Any and all liabilities (including liabilities arising out of the application of the doctrine of strict liability), obligations, losses, damages, penalties, fines, claims, actions, suits, judgments, costs, expenses and disbursements, whether any of the foregoing be founded or unfounded, (including reasonable legal fees and expenses and reasonable third party costs of investigation), of whatsoever kind and nature and whether or not involving damages to the Project or the Site.
- 1.63. Major Subcontractor. Any Subcontractor where the aggregate value of the applicable subcontracts and purchase orders between it and the Contractor (or other Subcontractor as applicable) with respect to the Project exceeds (or is reasonably expected by Contractor to exceed) \$500,000.
- 1.64. Materials Notice to Proceed. A Notice provided by Owner directing Contractor to procure certain materials, pursuant to the provisions of Section 8.1
- 1.65. Materials Notice to Proceed Date. The actual date on which the Materials Notice to Proceed is delivered to the Contractor by the Owner. The anticipated date is identified in Exhibit "I" as attached to each Release.
- 1.66. Materials Warranty. The warranty of Contractor under Section 18.2.
- 1.67. Maximum Aggregate Liquidated Damages. With respect to each Release, ten percent (10%) of the Contract Price as the Contract Price may be adjusted from time to time in accordance with the terms hereof.
- 1.68. Mechanical Completion Test Procedures. The written procedures for the Mechanical Completion Tests produced by Contractor and agreed to by Owner in accordance with Article 14 and Exhibit "A".
- 1.69. Mechanical Completion Tests. Those tests identified to be performed by the Contractor in connection with the construction and commissioning of the Project in accordance with Exhibit "A" and Article 14.
- 1.70. Monthly Progress Report. A written monthly progress report prepared by Contractor in

form and content generally in accordance with Exhibit “A”, Section 19 as attached to each Release.

- 1.71. Notice. A written communication between the Parties required or permitted by this Contract and conforming to the requirements of Article 33.
- 1.72. Owner. PacifiCorp, an Oregon Corporation or as Owner may assign to an Affiliate per Article 29.
- 1.73. Owner Acquired Permits. The Applicable Permits defined as Owner Acquired Permits in Exhibit “A”, Section 17 as attached to each Release.
- 1.74. Owner Caused Delay. Owner’s unexcused delay in performing or failure to perform any obligation of Owner under this Contract (other than as a result of Force Majeure or by Owner’s exercise of rights under this Contract, including the exercise by Owner of the right to have defective or nonconforming Work corrected or re-executed).
- 1.75. Owner’s Engineer. The engineering firm or other engineer or engineers (which may be employees of Owner) selected and designated by Owner.
- 1.76. Owner’s Facilities. The term shall mean any facilities owned, operated or otherwise controlled by Owner, which requires Owner authorization to obtain access.
- 1.77. Owner’s Scope. The work associated with the Project for which Owner is responsible and which is expressly identified as such in Exhibit A as attached to each Release.
- 1.78. Owner Event of Default. The term has the meaning set forth in Section 20.4.
- 1.79. Owner Milestones. The term has the meaning set forth in Section 3.2.
- 1.80. Parent Guarantor. The Parent Guarantor is [_____].
- 1.81. Parent Guaranty. The guarantee of the Parent Guarantor referred to in Section 35.2 in the form set forth in Exhibit “M”.
- 1.82. Parent Legal Opinion. A legal opinion of legal counsel to the Parent Guarantor reasonably acceptable to Owner in the form set forth in Exhibit “M”.

- 1.83. Partial Release and Waiver of Liens and Claims. A sworn statement and waiver of liens prepared by Contractor and each Major Subcontractor, as applicable, which provides that such Person waives and releases all mechanic's liens, stop notices and bond rights with respect to that portion of Work for which Contractor requested payment in the current Contractor's Invoice conditioned upon payment by Owner of the amount of such Contractor's Invoice in the applicable form set forth in Exhibit "Z".
- 1.84. Party and Parties. The terms have the meanings set forth in the first paragraph of this Contract.
- 1.85. Performance LOC. An irrevocable transferable letter of credit that is (a) issued for the benefit of Owner by a Qualified Bank that is acceptable to Owner, in Owner's sole discretion; (b) is in the stated amount equal to ten percent (10%) of the Contract Price with respect to each Release; and (c) is substantially in the form of Exhibit "O-1". The Performance LOC terminates in accordance with Section 35.2.
- 1.86. Person. Any individual, corporation, company, voluntary association, partnership, incorporated organization, trust, limited liability company, or any other entity or organization, including any Governmental Authority.
- 1.87. Pre-Construction Period. The period of the Project commencing on Owner issuance of a Limited Notice to Proceed and terminating at the Owner issuance of a Materials Notice to Proceed, during which period the Contractor shall perform the Pre-Construction Services as specified in Exhibit "B" as may be attached to each Release.
- 1.88. Pre-Construction Services. Services to be performed by Contractor during the Pre-Construction Period, pursuant to the provisions of Section 8.1, as specified in Exhibit "B" as may be attached to each Release, as requested by Owner in a Limited Notice to Proceed.
- 1.89. Prime Rate. The interest rate per annum published in The Wall Street Journal as the "prime rate" from time to time (or if more than one rate is published, the arithmetic mean of such rates), determined as of the date the obligation to pay interest arises.
- 1.90. Progress Payment(s). A discrete portion of the Contract Price, payable pursuant to the Progress Payment Schedule, as a progress payment for completion of discrete portions of Work, in accordance with Section 7.1.
- 1.91. Progress Payment Schedule. The Progress Payment Schedule as specified in Exhibit "D" as attached to each Release, setting forth payments to Contractor for completion of discrete portions of the Work.

- 1.92. Project. The complete electric transmission project to be designed, engineered, procured, constructed, tested and commissioned under a particular Release, together with all ancillary Equipment and subsystems, together with all supporting improvements and connections, as generally described in, and including all items described in, the Scope of Work attached to each Release. The Project generally consists of the Work.
- 1.93. Project Guaranteed Dates. The Substantial Completion Guaranteed Date and the Final Completion Date included in each Release (provided, however, that the Final Completion Date does not have any Delay Liquidated Damages related thereto).
- 1.94. Project Manager. The Project Manager designated by Contractor and approved by Owner pursuant to Section 4.5.
- 1.95. Project Mechanical Completion. Satisfactory completion by Contractor of all conditions necessary to achieve Project Mechanical Completion for the entire Project, as set forth in Section 13.2.
- 1.96. Project Mechanical Completion Certificate. A certificate in substantially the form as set forth in Exhibit "V" hereto, which Contractor shall submit upon completion of the entire Scope of Work as described in Exhibit "A" attached to each release, in accordance with the definition within Article 1.94.
- 1.97. Project Mechanical Completion Date. The date on which Project Mechanical Completion actually occurs and the entire Scope of Work described in Exhibit "A" as attached to each Release, is completed in accordance with the definition within Article 1.94.
- 1.98. Project Mechanical Completion Guaranteed Dates. The date, as specified in each Release, as such date may be modified in accordance with Article 17.
- 1.99. Project Representative. The Project Representative designated by Owner pursuant to Section 3.1.
- 1.100. Project Warranties. The warranties of Contractor as set forth in Article 18.
- 1.101. Punchlist. A schedule of Punchlist Items developed pursuant to Section 15.1(h), which list must be reasonably satisfactory to Owner.
- 1.102. Punchlist Items. Each item of Work that: (a) Owner or Contractor identifies as

requiring completion or containing Defects; (b) does not impede the ability of Owner to safely operate the Project in accordance with Industry Standards; (c) does not affect the operability (including the capacity, efficiency, reliability, or cost effectiveness), safety or mechanical or electrical integrity of the Project or the Transmission Grid; and (d) the completion or repair of which will neither interfere with, nor adversely affect, the performance of the Project or the Transmission Grid.

1.103. Qualified Bank. A United States branch of any United States bank whose secured debt obligations or long-term deposits are rated at least "A-" by Standard & Poors (or the equivalent rating thereof by Moody's) as at the date of issuance, and during the term, of any Letter of Credit.

1.104. Quality Assurance Program. The Contractor's quality assurance program for the Work as defined in Section 4.17.

1.105. Release. For each Project to be performed by Contractor hereunder, the authorized Owner representative shall submit to Contractor a Release substantially in the form attached hereto as Exhibit K. A unique Release, each with a unique corresponding Release number, shall be issued for each new Project and be signed by Owner and Contractor. The Release will include the attachments described in this Contract as, attached to each Release, including but not limited to attachments describing; Scope of Work, agreed price, period of performance, invoicing details and other such items. Each Release shall be incorporated into this Contract and be subject to the provisions, terms and conditions of this Contract.

1.106. Required Manuals. All manufacturers' operating data and manuals, Equipment and parts manuals, integrated and coordinated operation and maintenance manuals and instructions, and training aids reasonably necessary to safely, effectively and efficiently commission, test, start up, operate, maintain and shut down the Project, including those set out in the Deliverables Schedule.

1.107. Retainage. The amount withheld from payments to Contractor pursuant to Section 7.5.

1.108. Retainage LOC. An irrevocable transferable letter of credit that is (a) issued for the benefit of Owner by a Qualified Bank that is acceptable to Owner, in Owner's sole discretion; (b) is in the amount not less than the amount as required by Section 7.5; and (c) is substantially in the form of Exhibit "O-2". The Retainage LOC terminates in accordance with Section 7.6.

1.109. Schedule Recovery Plan. The term has the meaning set forth in Section 8.3.

- 1.110. Scope of Work. The requirements and specifications regarding the Work set forth under a particular Release, including Exhibit "A".
- 1.111. Sensitive Personnel. The term shall mean all Personnel with authorized unescorted physical access or authorized cyber access to Owner's CIPS Covered Assets.
- 1.112. Site. Those areas of real estate described in Exhibit "A", Section 18, as attached to each Release, for the performance of Work which may consist of existing or new substation sites and transmission line corridors, including any additional areas as may, from time to time, be designated in writing by Owner (in Owner's sole discretion) for Contractor's use hereunder.
- 1.113. Site Conditions. The term has the meaning set forth in Section 4.38.
- 1.114. Spare Parts. The term has the meaning set forth in Section 4.32.
- 1.115. Subcontractor. Any Person, other than Contractor, performing any portion of the Work (including any Subcontractor of any tier and any Vendor) in furtherance of Contractor's obligations under this Contract.
- 1.116. Substantial Completion. Satisfaction by Contractor or waiver by Owner of all of the conditions for Substantial Completion as set forth in Section 15.1.
- 1.117. Substantial Completion Certificate. A certificate in substantially the form as set forth in Exhibit "V" hereto.
- 1.118. Substantial Completion Date. The date, on which Substantial Completion actually occurs.
- 1.119. Substantial Completion Guaranteed Date. The date, as specified in each Release, as such date may be modified in accordance with Article 17.
- 1.120. Transmission Grid. The electric transmission and distribution system of Owner, or any other affected transmission owner or operator, and the electric transmission and distribution systems interconnecting to or adjacent to Owner's or other affected transmission owner or operator, electric transmission and distribution system.
- 1.121. Unescorted Personnel. The term shall mean all Personnel with authorized unescorted physical access to Owner's Facilities.

- 1.122. U.S. Customary System. The primary system of weights and measures (other than the metric system) used in the U.S. today inherited from, but now different from, the British Imperial System of weights and measures.
- 1.123. Vendor(s). Persons that supply Equipment to Contractor or any Subcontractor in connection with the performance of the Work.
- 1.124. Warranty LOC. An irrevocable transferable letter of credit that is: (a) issued for the benefit of Owner by a Qualified Bank that is acceptable to Owner, in Owner's sole discretion; (b) is in the stated amount equal to five percent (5%) of the Contract Price with respect to each Release; and (c) is substantially in the form of Exhibit "O-3". The Warranty LOC shall terminate in accordance with Section 35.2.
- 1.125. Warranty Period. The term has the meaning as set forth in Section 18.3.
- 1.126. Warranty Procedures. The term has the meaning as set forth in Section 18.8.
- 1.127. Work. All work and services required or appropriate in connection with the engineering, procurement, manufacturing, construction, erection, installation, training, commissioning (including inspection), testing and completion and all Equipment, and as further described in Section 4.1, including the Pre-Construction Services.
- 1.128. Workers' Compensation Laws. The term has the meaning as set forth in Section 4.24.

2. EXHIBITS, INTERPRETATION, CONFLICTS

- 2.1 Exhibits. This Contract includes the following Exhibits annexed hereto (and incorporates all attachments to such Exhibits, if any) and any reference in this Contract to an Exhibit by letter designation, Exhibit or title shall mean one of the following so indicated and such reference shall indicate such Exhibit herein.

EXHIBITS

- A Scope of Work and Specifications (attached to each Release)
- B Pre-Construction Services (attached to each Release)
- C-1 [BHE] Code of Business Conduct
- D Progress Payment Schedule and Schedule of Values (attached to each Release)

E	Change in Work Form
F	Form of Contractor's Invoice
G	Critical Path Method Schedule
H	Deliverables Schedule (attached to each Release)
I	Owner Milestones (attached to each Release)
J	Key Personnel (attached to each Release)
K	Form of Release
L	Not Used
M	Form of Parent Guarantee and Legal Opinion
N	Not Used
O	Form of Letters of Credit
P	Form of Assignment Clause for Subcontractors
Q	Insurance
R	Detailed Pricing Schedules, Change in Work Rates and Unit Price Change in Work Rates
S	Background Check Criteria / NERC-CIPS Standards
T	Contractor's Safety Assurance Program
U	Contractor's Quality Assurance Programs
V	Forms of Completion Certificates
W	Owner's Site Access and Safety Requirements
X	Not Used
Y	Property Retirement Unit Reporting Requirements
Z	Forms of Partial and Final Release and Waiver of Liens and Claims

2.2 Interpretation. Except as otherwise expressly noted:

- (a) Terms defined in a given number, tense or form shall have the corresponding meaning when used in this Contract with initial capitals in another number, tense or form;
- (b) Except as otherwise expressly noted, reference to specific Sections, Subsections and Exhibits are references to such provisions of or attachments to this Contract;
- (c) References containing terms such as "hereof," "herein," "hereto," "hereinafter," and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Contract taken as a whole;
- (d) "Includes" or "including" shall not be deemed limited by the specific enumeration of items, but shall be deemed without limitation;

- (e) References to agreements, certificates and other legal instruments include all subsequent amendments thereto, and changes to, and restatements or replacements of, such agreements, certificates or instruments that are duly entered into and effective against the parties thereto or their permitted successors and assigns;
- (f) References to Persons include their permitted successors and assigns;
- (g) A reference to a statute or to a regulation issued by a Governmental Authority includes the statute or regulation in force as of the date hereof, together with all amendments and supplements thereto and any statute or regulation substituted for such statute or regulations;
- (h) A reference to a governmental agency, department, board, commission or other public body or to a public officer includes an entity or officer that or who succeeds to substantially the same functions as those performed by such public body or officer as of the Effective Date;
- (i) Unless the context clearly intends to the contrary, words singular or plural in number shall be deemed to include the other and pronouns having a masculine or feminine gender shall be deemed to include the other;
- (j) Unless otherwise stated, words which have well known technical or construction industry meanings are used in this Contract in accordance with such recognized meanings; and
- (k) The words “acceptable to”, “approved by,” “satisfactory to,” “determine that,” “consent of” or other phrases of like effect or import shall mean that, unless expressly stated otherwise (including where the Contract provides a time period for such action), the Party exercising such right of acceptance, approval or judgment shall be reasonable under the circumstances and shall not unduly delay or withhold such acceptance, approval, consent or judgment.

2.3 Conflicts in Documentation.

- (a) In the event of any conflict between this document and any of the Exhibits hereto, the terms and provisions of this document, as amended from time to time, shall control, unless expressly stated otherwise in this document.

(b) Should there be any conflict between or within the Exhibit(s) (including the attachments to the Exhibits) hereto, the Contractor shall promptly give Notice to Owner and shall secure written instructions from the Project Representative before proceeding with the Work affected thereby. Upon receiving written instructions from the Project Representative, Contractor shall proceed as instructed.

2.4 Documentation Format. This Contract and all documentation to be supplied hereunder shall be in the English language.

3. **RESPONSIBILITIES OF OWNER.**

Owner shall:

3.1 Project Representative. Designate (by a Notice delivered to Contractor) a Project Representative, who shall act as a single point of contact for Contractor with respect to the prosecution of the Work but who shall not be authorized to execute or approve any Change in Work or any amendments to this Contract.

3.2 Owner Milestones. Owner shall commence or complete, as the case may be, the Owner's Scope in accordance with the milestones set forth on Exhibit "I" ("Owner Milestones") in accordance with the schedule, terms and conditions set forth in Exhibit "I" with respect to each applicable Owner Milestone. Owner and Contractor agree that the timely completion of the Contractor Schedule Milestones by Contractor is an important aspect of this Contract. In the event Contractor's failure to timely complete a Contractor Schedule Milestone by the date provided in Exhibit G.1.1 or a Contractor Cause results in Owner's failure to complete an Owner Milestone by the applicable date provided in Exhibit "I" or otherwise causes Owner to incur additional costs and expenses in connection with the performance of its work related to any Owner Milestones, then: (a) the Owner Milestone date shall be adjusted to reflect any delays to the extent caused by Contractor; and (b) Contractor shall pay Owner for any additional costs and expenses reasonably incurred by Owner as a result of any such delay.

3.3 Ministerial Assistance. In a reasonably prompt manner after Notice from Contractor, execute applications as Contractor may reasonably request in connection with obtaining any Contractor Acquired Permits. Contractor shall indemnify, defend, and hold harmless Owner from and against any and all Losses that Owner may incur as a result of signing any such applications at Contractor's request.

3.4 Owner Acquired Permits. Obtain with Contractor's reasonable assistance to be provided at no cost to Owner, and pay for all Owner Acquired Permits.

3.5 Access to Site. Subject to Section 4.18, the Land Rights Agreements and the terms of the Applicable Permits, Owner shall make the designated parts of the Site reasonably available to Contractor on or prior to the applicable Owner Milestone for such part of the Site so as to permit the Contractor to perform the Work applicable to such part of the Site; provided, however, that Contractor shall coordinate with Owner regarding initial entry onto the Site or any part thereof and contact with the Persons who own property on or near, or have granted license or easement rights in and to, the Site. Contractor shall be solely responsible for all costs and expenses required to upgrade (including paving if required), repair and maintain any existing roads and to construct, repair and maintain any temporary roads in connection with the Project. Contractor shall be solely responsible for all costs and expenses required to repair any damages to the Site arising as a result of Contractor's performance of the Work; and without limiting the generality of this sentence, shall also be responsible for the specific damages in accordance with Exhibit "A", Section 18.

3.6 Hazardous Materials. Owner shall be responsible for all Hazardous Materials (other than Hazardous Materials for which Contractor is responsible pursuant to Section 4.33) at the Site as of prior to the Effective date of each Release and for any Hazardous Materials subsequently brought to the Site by Owner or anyone employed by the Owner (other than Contractor, Subcontractor, anyone employed by them, or anyone for whose acts Contractor or any Subcontractor may be liable). Owner shall, with respect to those Hazardous Materials identified above in this Section, and at Owner's sole cost and expense, be responsible for: (a) the proper handling, storage, collection, containment, removal, transportation and disposal from the Site of all such Hazardous Materials; and (b) any environmental condition caused by such Hazardous Materials.

4. RESPONSIBILITIES OF CONTRACTOR.

Contractor shall:

4.1 Performance of Work. Perform or cause to be performed all Work for the engineering, procurement, construction, erection, installation, commissioning and testing of the Project and the other materials, equipment, machinery and facilities; which work and services shall include the provision of all permits, materials, Equipment, machinery, tools, labor, transportation, administration and other services and items required to complete and deliver to Owner the fully integrated and operational Project, all on a fixed-price, turnkey, guaranteed-date basis, and otherwise in accordance with the Contract (including Exhibit "A" and, if applicable, Exhibit "B"), Applicable Laws and Industry Standards. Contractor

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Both Parties have caused an individual with the requisite authority to acknowledge this and each page of this Contract prior to execution.

Contractor: Initial _____

Company: Initial _____

hereby agrees to perform or cause to be performed all Work upon the terms and conditions of this Contract.

Contractor shall perform and complete all of the Work on a turnkey basis without any Defects, in accordance with the terms of this Contract and in compliance with Industry Standards, Applicable Laws and Applicable Permits; provided, however, that where any such standard, law, permit or contract provides for less stringent standards than those specifically stated in this Contract, the standards specifically stated in this Contract shall govern.

Where this Contract describes a portion of the Work in general, but not in complete detail, the Parties acknowledge and agree that the Work includes any incidental work that within the construction industry is customarily included in projects of the type contemplated by this Contract or by Industry Standards.

Contractor shall design the Project so that it is capable of operation, at the design levels specified in the Scope of Work, including Exhibit "A", in compliance with Industry Standards, Applicable Laws and Applicable Permits. Contractor shall design the Project so that it will allow operation of the Project and its component parts over the full range of operative and ambient conditions while meeting Applicable Laws, Applicable Permits and Industry Standards. Contractor acknowledges that this Contract constitutes a fixed price obligation to engineer, design, procure, construct and test through Substantial Completion a turnkey project, complete in every detail, within the time and for the purpose specified herein by Owner.

References to the obligations of Contractor under this Contract as being "turnkey" and performing the Work on a "turnkey basis" mean that Contractor is obligated to supply all of the Equipment, labor and design services and to supply and perform all of the Work, in each case as may reasonably be required, necessary, or appropriate (whether or not specifically set forth in this Contract) to complete the Work such that the Project satisfies the applicable terms and conditions set forth in this Contract, all for the Contract Price.

The Project shall be built in a manner so that none of the Work (including the Equipment) will be determined, for insurance purposes, to be "prototype equipment."

Contractor acknowledges that the Project permits, including applicable regulatory approvals, may be based on work areas and conditions as defined in those documents. Project work areas may have been, or may be, identified including, but not limited to pull sites, work areas, access roads, and potential staging areas. Project change opportunities may be severely limited. No Project changes will be approved if they would be located outside of the geographic boundary of the established project work areas or otherwise are deemed to alter the circumstances, impacts, conditions, or effects of the Project.

Certain details of the Work are further described in this Article 4. Without limiting the foregoing, Contractor shall perform the following as part of the Work.

4.2 Cost of Work. Furnish, be responsible for, and pay the cost of all of the Work including labor, materials, Equipment and supervision necessary to engineer, procure, expedite, deliver, receive, secure, off-load, store, construct, inspect, commission and test the Project, in strict accordance with the provisions of this Contract, including all access roads, site work, footings, foundations, pilings, drilled piers, construction materials, construction equipment, and auxiliaries.

4.3 Facilities. Provide all communication facilities, material storage and laydown areas, construction water, construction electricity and sanitary facilities to be used by Contractor and Subcontractors during performance of the Work.

4.4 Organization. Maintain a qualified and competent organization at the Site with adequate capacity and numbers of construction and commissioning personnel, construction equipment, tools, materials, supplies and facilities to execute the Work in a safe, efficient, environmentally sound, and professional manner at a rate of progress in accordance with the Critical Path Method Schedule.

4.5 Project Manager/Staff. Designate a Project Manager acceptable to Owner who will have full responsibility for the prosecution of the Work and will act as a single point of contact in all matters on behalf of Contractor. Designate a Construction Manager and provide staff to supervise, manage and coordinate the Work of Contractor and Subcontractors on the Site. The Key Personnel shall at all times hold the positions and be dedicated to the performance of the duties described in Exhibit "J". Any replacement of the Project Manager or Key Personnel shall be subject to the prior written consent of Owner which consent will not be unreasonably withheld. If Owner fails to respond to a request for consent within ten (10) Business Days after Owner's receipt of Contractor's request, Owner shall be deemed to have consented to the proposed individual.

4.6 Contractor Acquired Permits. Obtain all Contractor Acquired Permits and provide copies to Owner at Owner's request.

4.7 Inspection. Perform all inspection; expediting, quality surveillance, and other like services required for performance of the Work, including inspecting all materials and Equipment that comprise the Project or that are to be used in the performance of the Work. Contractor shall be responsible for determining all utility locations, underground obstructions, archeological and cultural resources at its own expense prior to undertaking any Work at the Site.

4.8 Maintenance of Site. Maintain the Site and any Contractor Yard Site clear of Hazardous Materials, debris, waste material and rubbish. All trash, debris and waste materials shall be removed from the Site and disposed of by Contractor, in a timely manner. All waste must be disposed of at a permitted sanitary disposal site, and Contractor shall provide Owner copies of all waste disposal manifests. Combustible material shall be promptly removed

from the Site or Contractor's Yard Site, and shall not be allowed to accumulate. Burning on the Site and the Contractor Yard Site is prohibited. Promptly upon the completion of the Work, the Work shall be cleaned and all scrap, trash, and waste materials and debris resulting from Work under this Contract shall be removed from the Site and the Contractor Yard Site. All Contractor-owned facilities, materials and construction equipment shall be removed from the Site and the Contractor Yard Site and such sites shall be left in its original condition, except to the extent it has been modified pursuant to this Contract. If Contractor fails to clean up as provided herein, Owner may do so and the reasonable cost thereof shall be charged to Contractor or offset against payments hereunder.

4.9 Price Allocation Schedule. Upon Owner's reasonable requests, provide a price allocation schedule for the Work and other information reasonably necessary for Owner to maintain segregated accounts for its accounting and tax records, ownership records and/or fixed asset records.

4.10 Site Security. Contractor shall provide all necessary and reasonably appropriate security measures for the protection of the Work, the Site, the Contractor Yard Site and the Project. Contractor will consult with and cooperate with Owner in the development and implementation of security practices and programs for the Project. Contractor shall prepare and maintain accurate reports of incidents of loss, theft, or vandalism and shall furnish these reports to Owner in a timely manner. Contractor shall not be entitled to any adjustment of the Substantial Completion Date or any adjustment to the Contract Price arising from incidents of Equipment theft or vandalism.

4.11 Contractor Safety Program. Contractor shall comply with the requirements of Exhibit "A", the Contractor Safety Program set out in Exhibit "T", and Owner's Safety Requirements set out in Exhibit "W" (including any third party safety requirements that are applicable to portions of the Work and stated in Exhibit "W"), and provide all necessary and reasonably appropriate safeguards at the Site and any Contractor Yard Site for the protection of all Persons and the Work. Contractor shall not perform any Work at the Site until and unless a safety plan applicable to such Work is either included in Exhibit "T" or included in the fully integrated safety program delivered and accepted by Owner in accordance with this Section 4.11. In the event Contractor fails to comply with the safety program requirements set forth in this Contract, Owner shall be entitled to immediately suspend the Work until non-compliance is rectified, and neither the Contract Price nor any other Project Guaranteed Dates shall be adjusted as the result of any such suspension.

Within sixty (60) days of the effective date of each Release, Contractor shall provide, by Notice to Owner, a Contractor Project safety program that has fully integrated the requirements in Exhibit "A", Exhibit "T" and Exhibit "W" and that is prepared specifically for this Project (the "Contractor Safety Program"). Owner shall have the right to review and comment on such program and if Owner provides Contractor with comments, then Contractor shall incorporate such changes into such program. If Owner fails to comment within fifteen (15) days after receipt of such notice, Owner shall be deemed to have accepted such Contractor Safety Program. Upon acceptance (or deemed acceptance) of such

program by Owner, such program shall supersede and be deemed to replace the program attached as Exhibit "T" hereto. In the event the standards or requirements derived from the foregoing are inconsistent, Contractor shall perform, or cause to be performed, its obligations in accordance with the requirements of the most stringent rule, standard, criteria or guideline. Notwithstanding Owner's review and approval of the Contractor Safety Program, Contractor shall remain solely responsible for performing the Work in accordance with this Contract.

Contractor shall provide Project Representative with immediate telephone or email notification followed by Notice to Owner within twenty-four (24) hours of any accidents and/or occupational injuries or vehicle accidents that occur to any of Contractor's or Subcontractor's employees working on or in the vicinity of the Site or a Contractor Yard Site, any damages to Owner's facilities, any property damage, bodily injury, electric contact, or fatality that arises in connection with the performance of this Contract on or in the vicinity of the Site or Contractor Yard Site which such notice shall be on the Owner's form included in the materials attached as part of Exhibit "W". Contractor will furnish Owner with a copy of all accident reports or work injury reports as promptly as possible and in any event within twenty-four (24) hours of such accident or work injury and in the event any further reports are completed after such initial reporting, Contractor shall promptly provide Owner a copy. Contractor shall assist Owner in any investigation and provide information as reasonably requested by Owner relating to the incident. Contractor shall provide Owner with a 'root cause analysis' of the accident or incident within three (3) business days of the accident or incident occurring. All accident and incident reports shall comply with Applicable Laws. Contractor shall provide Owner with copies of all written communications with Governmental Authorities and insurance companies (including any notices) with respect to accidents that occur at the Site.

4.12 Equipment. Arrange for complete handling of all Equipment and construction equipment including inspection, expediting, quality assurance, shipping, loading, unloading, customs clearance, permitting and licensing, receiving, storage, and claims.

4.13 Construction Materials and Supplies. Provide all temporary construction materials, office and meeting facilities, all communication lines and facilities, warehousing and storage facilities, fuel storage facilities, sanitary facilities, parking facilities for Contractor's and Subcontractors work force, laydown areas, equipment, supplies, construction utilities and facilities, special tools, and commissioning supplies reasonably necessary or appropriate for the construction, testing, commissioning, and operation and maintenance of the Project until achievement of Substantial Completion. Contractor shall provide internet access and telephone access at the construction Site office. By delivery of a Notice to Owner prior to the disposition of any surplus construction materials, parts, or supplies remaining on the Site on the Substantial Completion Date (other than materials and supplies necessary to achieve Final Completion), Contractor shall give Owner the option to purchase all or part of such items at a price not exceeding Contractor's cost therefor. Owner shall exercise such right, if it so elects, within thirty (30) days after receipt of such Notice.

4.14 Contractor's Personnel/Drugs, Alcohol and Firearms. Contractor shall employ in the performance of the Work only persons qualified for the same. Contractor shall at all times enforce strict discipline and good order among its employees and the employees of any Subcontractor of any tier. Contractor shall not permit or allow the introduction or use of any firearms, illegal drugs or intoxicating liquor upon the Work under this Contract, or upon any of the grounds occupied, controlled or used by Contractor in the performance of the Work. Contractor shall immediately remove from the Work, whenever requested by Owner, any person considered by Owner to be incompetent, insubordinate, careless, disorderly, or in violation of the above restriction on firearms, illegal drugs or intoxicating liquor, or under the influence of illegal drugs or intoxicating liquor, and such person shall not again be employed in the performance of the Work herein without the consent of Owner.

4.15 Applicable Laws/Permits. Contractor shall provide all technical support and information, and other reasonably requested information, to assist the Owner in applying for and obtaining Owner Acquired Permits. Contractor shall comply in all respects with all Applicable Laws and Applicable Permits relating to the Project, the Site, the Contractor Yard Site and the performance of the Work. The Contractor Acquired Permits either have been obtained by Contractor and are in full force and effect on the Effective date of each Release or will be obtained by Contractor and will be in full force and effect on or prior to the date on which they are required, under Applicable Laws, to be in full force and effect, so as to permit Contractor to commence and prosecute the Work to completion in accordance with the Critical Path Method Schedule.

Without limiting the generality of the foregoing, Contractor shall comply with all Applicable Laws and Applicable Permits regarding environmental matters. Prior to proceeding with construction activities, Contractor must develop an environmental assurance plan complying with the requirements of Exhibit "A", Section 22. Contractor's environmental assurance program will be subject to Owner's review and approval. Delays incurred due to Contractor's failure to provide an environmental assurance program approved by Owner will not constitute a Change in Work. Within forty-five (45) days of the effective date of each Release, Contractor shall provide, by Notice to Owner, a Contractor environmental assurance program that has fully integrated the requirements in Exhibit "A", Section 22 and that is prepared specifically for this Project (the "Contractor Environmental Assurance Program"). Owner shall have the right to review and comment on such program and if Owner provides Contractor with comments, then Contractor shall incorporate such changes into such program. If Owner fails to comment within fifteen (15) days after receipt of such notice, Owner shall be deemed to have accepted such Contractor Environmental Assurance Program. Upon acceptance (or deemed acceptance) of such program by Owner, such program shall supersede and be deemed to replace the program attached as Exhibit A, Section 22" hereto. In the event the standards or requirements derived from the foregoing are inconsistent, Contractor shall perform, or cause to be performed, its obligations in accordance with the requirements of the most stringent rule, standard, criteria or guideline and in all events in compliance with Applicable Laws and Applicable Permits. Notwithstanding Owner's review and approval of the Contractor

Environmental Assurance Program, Contractor shall remain solely responsible for performing the Work in accordance with this Contract.

Contractor shall be responsible for all Losses that may arise (including those that Owner pays or becomes liable to pay) because of non-compliance with requirements in this Section, other than any such Losses arising from: (a) the acts or omissions of Owner, Owner's employees and agents, or other third parties under the control of Owner, or (b) Hazardous Materials for which Owner is responsible pursuant to Section 3.6.

So long as Contractor has complied with its obligation to provide support and information as described above, Contractor shall be entitled to request a Change in Work in accordance with Article 17 in the event the final conditions, obligations and/or requirements of an Owner Acquired Permit (as identified in Exhibit "A", Section 17 as not being in final form as of the Effective date of each Release) are different than those conditions, obligations and/or requirements that should have been reasonably anticipated by the Contractor based upon the Scope of Work, Industry Standards, and the applicable permit application or draft permit (if and as provided to Contractor by Owner prior to the Effective date of each Release) and such difference has a materially adverse effect on Contractor's costs and schedule for performing the Work. Notwithstanding the forgoing, variances to Owner Acquired Permits that are not directed and approved by Owner will not constitute a Change in Work.

4.16 Replacement at Owner's Request. Within two (2) Business Days after request by Owner, remove from the Site and performance of the Work, and cause any Subcontractor to remove from the Site and performance of the Work, and as soon as reasonably practicable, replace, any individual performing the Work (including any of the Key Personnel) whom Owner believes to be creating a safety hazard or a material risk of: (a) non-achievement of a Project Guaranteed Date; or (b) material non-performance by Contractor in accordance with this Contract.

4.17 Quality Assurance Programs. Use effective quality assurance programs, acceptable to Owner and consistent with the requirements of Exhibit "A" and the Quality Assurance Program set out in Exhibit "U" in performing the Work. Within forty-five (45) days of the effective date of each Release, Contractor shall provide by Notice to Owner a Quality Assurance Program that has fully integrated the requirements in Exhibit "A" and Exhibit "U" and that is prepared specifically for this Project ("Quality Assurance Program"). Owner shall have the right to review and comment on such program and if Owner provides Contractor with comments, then Contractor shall incorporate such changes into such program. If Owner fails to comment with fifteen days after receipt of such notice, Owner shall be deemed to have accepted such program. Contractor shall not perform any Work until and unless a quality assurance program applicable to such Work is either included in Exhibit "U" or included in the Quality Assurance Program delivered and accepted by Owner in accordance with this Section 4.17. Upon acceptance (or deemed acceptance) of such program by Owner, such program shall supersede and be deemed to replace the program attached as Exhibit "U" hereto. Notwithstanding Owner's review and approval of such

program, Contractor shall remain solely responsible for performing the Work in accordance with this Contract.

4.18 Access. Contractor and its Subcontractors may access those parts of the Site identified in Exhibit "I" as being available to be accessed by Contractor for the performance of the Work on the date of the corresponding Owner Milestone as set forth on Exhibit "I", and any such access by Contractor and its Subcontractors shall be in accordance with the terms of this Contract. In no event shall Contractor or any Subcontractor commence any Work upon any portion of the Site unless and until Owner issues a Notice to Contractor that such portion of the Site may be accessed by the Contractor to perform the Work, and then upon such issuance Contractor shall only be permitted to access those portions of the Site reasonably required to be accessed to perform the Work that is the subject of the applicable Notice, unless otherwise agreed in writing by Owner.

Contractor shall use only the entrance(s) to the Site as ultimately determined, per Section 4.1, as a result of the permits, plans and designs resulting from the Pre-Construction Services for ingress and egress of all personnel, equipment, vehicles and materials. In addition, Contractor shall comply with the terms set forth in the Land Rights Agreements as described in Exhibit "A", Section 18 with respect to certain specific access matters. Contractor shall perform the Work consistent and in accordance with Owner's ownership, license, easement rights in and to the Site, and the Land Rights Agreements, all as set forth in Exhibit "A", Section 18. That portion of the Site subject to the Land Rights Agreements may only be accessed by using the right-of-way as defined in such Land Rights Agreements and not across other property of the right-of-way landowner. Owner agrees to provide to Contractor any Land Rights Agreement or Contractor obligations with respect to access to the Site not included in Exhibit "A", Section 18 or the other provisions of Exhibit "A" after the Effective date of each Release and prior to the applicable Owner Milestone set forth in Exhibit "I" relating to Site Access.

Contractor shall not damage, close, or obstruct any highway, road, or other public or private easement, except to the extent allowed by Applicable Permits. If such facilities are closed, obstructed, damaged, or made unsafe by Contractor, Contractor shall, at its sole expense, make such repair as necessary and shall also provide such temporary guards, lights, and other signals as necessary or required for safety or as reasonably requested by Owner.

Owner shall have access to all existing facilities in case emergency repairs are necessary. Contractor shall not block or obstruct existing access routes to existing facilities.

Contractor has undertaken (or will be deemed to have undertaken) an independent determination of the adequacy of the Land Rights Agreements as described in Exhibit "A", Section 18 and represents that such Land Rights Agreements (or if not obtained as of the Effective Date, if substantially in the form of the Land Rights Agreements as described in Exhibit "A", Section 18) are satisfactory and sufficient for Contractor to perform the Work hereunder on the real estate covered by such Land Rights Agreements and to gain access to the transmission line right of way and the substation properties. Contractor shall comply

with the terms of the Land Rights Agreements. As of the Effective date of each Release, Contractor represents and warrants that it has inspected and is fully familiar with the Site and the Land Rights Agreements (as listed in Exhibit "A", Section 18) and that the Site and such Land Rights Agreements are sufficient for Contractor to undertake and complete the Work. Contractor shall have the sole responsibility to obtain all construction permits, transportation permits, and other licenses, rights of way and other real property rights and easements necessary for Contractor to complete the Work that are not part of the Land Rights Agreements, and any Owner assistance to Contractor in obtaining, or negotiation of, such rights shall be for Contractor's account and Owner may deduct such costs and expenses from any payment due to Contractor from Owner hereunder.

Contractor shall provide all necessary information and documents and use all reasonable efforts to assist Owner in obtaining any Land Rights Agreements or other real property rights that Owner at any time is seeking in connection with the Project. Contractor shall provide direct support, including but not limited to engineering drawings, expert testimony, supporting documents and affidavits, etc., to Owner's legal counsel in connection with any condemnation proceedings or any other legal action that may arise from the work performed. Contractor shall notify Owner upon the occurrence, or likely occurrence, of a dispute, conflict, confrontation, or other similar problem, or potential problem, involving one or more owners or occupiers of land so situated as to potentially result in a situation that may have a material adverse effect upon the performance of the Work. Contractor shall cooperate with Owner in resolving all such problems.

Contractor agrees to conduct and coordinate (if necessary) the performance of the Work by Contractor at the Site with the other construction contractors performing work at the Site. Contractor shall, prior to proceeding with any Work at the Site, give Notice to Owner of any issues that Contractor has determined would materially delay or affect Contractor's performance of the Work. Failure of the Contractor to provide such Notice shall constitute an acknowledgment and admission that Owner has provided reasonable access to the Site.

4.19 Documents at Site. Upon mobilization to the Site, Contractor shall maintain at the Contractor's primary field office at or near the Site for Owner one (1) record copy of the Contractor Deliverables, in good order and marked currently to record changes and selections made during the Work and, in addition, approved shop drawings, product data, samples and similar required submittals. These shall be available to Owner at all times. Upon completion of the Work, Contractor shall promptly furnish Owner with one (1) set of as-built drawings and complete copies of the shop drawings, product data, samples, operating manuals, parts books and other submittals required by the Contract.

4.20 Other Assistance. Until Final Completion, Contractor shall: (a) to the extent reasonably requested by Owner, assist Owner in dealing with Governmental Authorities and other Persons in any and all matters relating to the Work and/or the Project; and (b) cooperate to the extent reasonably necessary to enable Owner to perform its obligations under Owner's agreements with other Persons.

4.21 Data, Drawings and Manuals. Provide all operating data, preliminary or redline as-built drawings, manuals and other information necessary to safely and efficiently commission, test, operate, shut down, and maintain the Project (including those set forth in Exhibit "A"). Contractor shall maintain at the Site (in compliance with the maintenance requirements in Section 4.19) for Owner one (1) record copy of the Contractor Deliverables in good order and marked currently to record changes and selections made during the Work and, in addition, approved shop drawings, product data, samples and similar required submittals. These shall be kept on the Site and be available to Owner at all times.

4.22 Training. Contractor shall provide the training as described in Exhibit "A".

4.23 Announcements; Publications. Other than as may be required by Applicable Laws, Contractor shall not make any public announcements or issue any public publication about the Project without the prior written consent of the Owner.

4.24 Workers' Compensation. Contractor shall comply with all applicable statutory requirements of the state and/or federal regulations (e.g., FELA, USL&H, Jones Act) where the Work is to be performed ("Workers' Compensation Laws") and shall furnish proof thereof satisfactory to Owner prior to commencing Work.

4.25 Documents Requested. Provide such data, reports, certifications and other documents, including multiple hard copies of each and one electronic copy (unless another quantity is specified in the Contract), or assistance related to the Work or this Contract as may be reasonably requested by the Owner; provided, however, that the provision of this information shall not in any manner modify Contractor's rights or obligations under any other provision of this Contract.

4.26 Critical Path Method Schedule. Attached in Exhibit "G" is a summary schedule (including all of the Critical Path Items and the Owner Milestones) (the "Summary Bid Schedule"). For Pre-Construction Services scope of work, as may be described in Exhibit B, the Contractor is not required to submit a schedule. Contractor shall provide materials and information on an updated basis in accordance with Exhibit G.8.1.2 for Pre-Construction Services.

Within fourteen (14) days of the effective date of each Release, Contractor shall provide Owner with a detailed preliminary schedule for the first ninety (90) days after the effective date of each Release. The preliminary schedule should be consistent with the Summary Bid Schedule and must satisfy the requirements of Exhibit G.

For construction services scope of work as described in Exhibit A, the Contractor must provide a complete detailed critical path method schedule (the "Project Baseline Schedule") to be submitted to the Owner, for review, within sixty (60) Days of the effective date of each Release.. The Project Baseline Schedule must be consistent with the Summary Bid Schedule, and satisfy the requirements set forth in Exhibit "G". The Project Baseline Schedule shall be subject to Owner's approval, not to be unreasonably withheld or delayed.

The latest version of the critical path method schedule approved by Owner shall be deemed to be the Critical Path Method Schedule required under the Contract.

Such complete fully detailed Critical Path Method Schedule shall be the baseline schedule against which all updates shall be compared against and neither the Critical Path Items, the Contractor Schedule Milestones, nor the Owner Milestones may be revised except in accordance with Article 17. Contractor shall advise Owner of any delays to any Critical Path Items of more than fifteen (15) days and promptly provide Owner with the reasons for such delay. In connection therewith, Contractor shall employ a project management system able to provide schedule monitoring and analysis which shall include a comparison of the original Critical Path Method Schedule with the actual progress for each time period with all variances noted. If any of the Critical Path Items, Contractor Schedule Milestones, Owner Milestones, or Project Guaranteed Dates are adjusted pursuant to Article 17, the system shall also provide a comparison of the revised Critical Path Method Schedule with actual progress. Schedule analysis shall include a determination of the impact of such variance, if material, on the Contractor's ability to meet the Project Guaranteed Dates and Contractor Schedule Milestones and, if applicable, any action necessary to correct the variance.

Utilizing the critical path method, Contractor shall continually be aware of factors that are delaying or that could delay the achievement of a Contractor Schedule Milestone or Substantial Completion and shall take all commercially reasonable and prudent remedial actions within its control to eliminate or minimize schedule delays including overtime for the employees of Contractor and Subcontractors and the assignment of additional personnel and/or other resources. During construction, the Contractor will update its Critical Path Method Schedule to reflect the current status of the Work. At a minimum, the updates will be performed and provided to Owner on a monthly basis as part of the Project Progress Report.

4.27 Project Progress Report. Contractor shall prepare a monthly Project Progress Report following the format of Exhibit "A", Section 19 and submit it to Owner within ten (10) days after the end of each reporting period and as part of the Contractor's Invoice submitted pursuant to Section 7.1. In addition, Contractor shall keep, and furnish to Owner at Owner's request, such information as Owner may reasonably require to determine that the Work is progressing according to the Critical Path Method Schedule and for the purpose of confirming that Progress Payments are due hereunder, including, but not limited to monthly forecasting and accruals processes acceptable to Owner. Contractor also shall keep daily logs at the Site and shall provide to Owner copies of weekly reports of actual construction progress as compared with scheduled progress, which such weekly reports shall include at a minimum the information required for such weekly reports as described in Exhibit "A", Section 19 hereto.

4.28 Accident Reports. Provide Owner with written accident reports for accidents that occur at the Site, prepared in accordance with the Contractor Safety Program and the requirements of this Contract. Provide Owner with copies of all written communications with Governmental Authorities and insurance companies (including any notices) with

respect to accidents that occur at the Site or the Contractor Yard Site or in connection with the performance of the Work, and thereafter provide such written reports relating thereto as Owner may reasonably request.

4.29 Punchlist. On a weekly basis after the Substantial Completion Date, revise and update the Punchlist and schedule and budget therefor as initially prepared in accordance with Section 15.1(e). After the Substantial Completion Date, Contractor shall complete each item of Work set forth on the Punchlist within the scheduled time period for such item as agreed to pursuant to Section 15.1(e).

4.30 Measurements. Exclusively use the U.S. Customary System units of measurement in all specifications, drawings, and other documents.

4.31 Meetings. Schedule and conduct periodic meetings with Owner in accordance with the requirements of Exhibit "A" before mobilization, at Contractor's office or such other location as the Parties may agree, and after mobilization, at the Site, or such other location as the Parties may agree, for the purpose of reviewing the progress of the Work and adherence to the Critical Path Method Schedule. The frequency of such meetings shall be in accordance with the frequency described in the Exhibits or as established and modified, from time to time, by mutual agreement of Owner and Contractor; provided, however, Owner shall be entitled to require that meetings occur as frequently as weekly. If Owner requests that Contractor cause a representative of any Subcontractor to attend any such meeting, then Contractor shall cause a representative of such Subcontractor to attend such meeting.

4.32 Parts. Contractor shall for its own account, provide all parts needed for construction, commissioning and testing of the Project. Contractor shall provide the spare parts identified in Exhibit "A", Section 21 ("Spare Parts") to be provided by Contractor and the cost of such Spare Parts is included in the Contract Price. Contractor shall also provide the pricing for the parts in accordance with the requirements set out in Exhibit "A", Section 21. In addition, Contractor shall use reasonable efforts prior to ordering an item of Equipment to deliver to Owner reasonably in advance of placing such order a schedule describing any additional spare parts relating to such item of Equipment that the Contractor or Subcontractor reasonably suggests to be purchased with the Equipment along with the price for such part(s).

Contractor agrees that any part (whether provided by Contractor or Owner) that is incorporated into the Project by Contractor shall be covered under the Project Warranties and the other terms of the Contract, notwithstanding that such part may not have been provided or procured by Contractor.

4.33 Hazardous Materials.

(a) Contractor's Obligations. Contractor shall comply with the obligations in Exhibit "A" with respect to Hazardous Materials.

- (b) Contractor's Responsibility. Contractor shall be responsible for all Losses arising from Hazardous Materials being delivered to, brought to or used at the Site or Contractor Yard Site by Contractor, Subcontractor or anyone employed by them, except those for which Owner is responsible pursuant to Section 3.6, including the costs of: (i) the permitting, storage, transportation, processing or disposal of Hazardous Materials, (ii) the remediation of any environmental condition caused by such Hazardous Materials, and (iii) any fines or penalties imposed by any Governmental Authority. Without limiting the generality of foregoing, Contractor shall be responsible for any Losses relating to the disposal, discharge, disturbance or release of Hazardous Materials at or in the vicinity of the Site or Contractor Yard Site by Contractor (or otherwise present at or in the vicinity of the Site) as a result of Contractor's or Subcontractor's negligence or failure to comply with the terms of this Contract.
- (c) Procedures Upon Discovery. If Contractor discovers, encounters or is notified of the existence of any Hazardous Materials at the Site (but excluding any Hazardous Materials brought to the Site by Contractor or a Subcontractor and being used by Contractor or a Subcontractor in compliance with Applicable Laws or any Hazardous Materials that are being stored at the Site by Owner in compliance with Applicable Laws), then:
- (i) Contractor shall as promptly as reasonably possible cease all Work in any area affected thereby;
 - (ii) Contractor shall promptly give Notice to Owner thereof and cordon off or otherwise barricade the area containing such Hazardous Materials unless instructed otherwise by Owner; and
 - (iii) Contractor shall promptly provide Owner with such written reports relating thereto as Owner may reasonably request.
- (d) Contractor's Right to a Change in Work. Contractor shall not be entitled to any extension of time, additional compensation or a Change in Work hereunder for any delay or costs incurred by Contractor as a result of the existence of Hazardous Materials for which Contractor is responsible pursuant to this Section 4.33. However, should Contractor encounter Hazardous Materials at the Site which are not Contractor's responsibility pursuant this Section 4.33, then Contractor shall be entitled to a Change in Work in accordance with Article 17.

4.34 Design of Project. Contractor shall further design and construct the Project so that it will allow operation of the Project and each of its component parts over the full range of operating and ambient conditions specified in Exhibit "A" while meeting Applicable Laws, Applicable Permits and Industry Standards.

All engineering work of the Contractor (or any Subcontractor) requiring certification shall be certified and all Drawings and Specifications requiring sealing shall be sealed in each case by a professional engineer licensed and properly qualified to perform such engineering services in the state in which such portion of the Work is performed and in all appropriate jurisdictions and such engineers and their qualifications shall be subject to Owner's review hereunder. Upon Owner's request, Contractor shall provide Owner with the resumes and other information regarding such Persons. Contractor shall use, and shall cause its Subcontractor to use, staff that are certified, professional engineers in the states in which the Work is to be performed in relation to all mechanical, electrical and civil engineering Work performed in the respective states.

4.35 Audit. Contractor shall keep such full and detailed records, books and other documentation in accordance with Industry Standards and with generally accepted accounting principles as may be necessary for substantiation of all Contractor claims for additional compensation or Changes in Work. Owner and its respective designees, shall be afforded access to, be allowed to inspect and audit, and be allowed to make copies of such books, records and documentation. Such books, records and documentation will be available in the United States at Contractor's regular place of business during normal working hours. Contractor shall preserve all such books, records and documentation for a period of seven (7) years after the Final Payment, or longer where required by Applicable Laws. These requirements shall also apply to all Subcontractors and materials suppliers. The audit rights provided herein shall apply to the full extent necessary to verify any cost-based components of Contractor's pricing, as well as any portion of the guaranteed fixed pricing that is subject to commodity pricing adjustments pursuant to Section 6.1.1.

4.36 Operation of Existing Facilities. Contractor specifically acknowledges and agrees that the Work must be performed by the Contractor within the operating parameters relating to the Transmission Grid as described in Exhibit "A". In addition, Contractor agrees that it shall plan and perform the Work in such a manner to prevent disruption to the operations of any generating facility and the Transmission Grid, unless otherwise expressly approved in writing by Owner. In the event of an emergency on the Transmission Grid or during any period for which Contractor has rendered a portion of the Transmission Grid inoperable or impaired, within 24 hours' notice from Owner, Contractor shall remove such condition in order to render the Transmission Grid fully operable.

4.37 Delivery of Documents. Owner and Contractor agree that the timely submission to Owner by Contractor of certain engineering Contractor Deliverables is an important aspect of this Contract. In the event Contractor's failure to timely provide Contractor Deliverables in accordance with the Deliverables Schedule (as established in accordance with Section 12.4) results in Owner's failure to obtain an Owner Acquired Permit or

otherwise fulfill its obligations to Contractor under this Contract, then Contractor shall not be entitled to a Change in Work as a result of such delay.

4.38 Site Conditions. Neither Owner nor any of its agents or representatives have made nor shall they make any express or implied warranty to Contractor as to the accuracy and completeness of any test, inspection, report or other information concerning the condition of the Site and Owner shall not be liable to Contractor for any such information provided by Owner or its agents or representatives.

Contractor specifically represents and warrants that it has carefully examined the Agreement and understands the Agreement and Contract Documents, including all Drawings, Scope of Work, Plans and Specifications, and special conditions, if any. Contractor further represents that it has inspected the sites and routes of the Work and is thoroughly acquainted with all conditions that may be encountered in performing the Work. Contractor has considered all matters and factors that could affect the Work, or the cost thereof, or the schedule to complete the Work. No claim for either additional compensation or extension of time alleging changed, concealed or unknown conditions will be allowed or recognized by Company. In relation to the Work and the project site, Contractor has taken into account all facets of the job including the required access.

Contractor has investigated (or will be deemed to have investigated) the Site and each other location where any portion of the Work shall be performed and surrounding locations, including both surface and subsurface conditions and has satisfied itself with respect to the nature and location of the Work and the general and local conditions in and around the Site with respect to the environment, transportation, access, waste disposal, handling and storage of materials, availability and quality of electric power, availability and quality of water, availability and quality of roads, climatic conditions and seasons, physical conditions at the Site and the surrounding area as a whole, topography and ground surface conditions, sound attenuation conditions, subsurface geology and conditions, nature and quantity of surface and subsurface materials to be encountered (excluding Hazardous Materials) but including equipment and facilities, and requirements of all Governmental Authorities with regard to flora, fauna and cultural conditions needed before and during performance of all Contractor's obligations under this Contract (the foregoing, collectively, the "Site Conditions").

In the event that Contractor performs any geotechnical studies, Contractor shall promptly provide Owner with a copy of such studies and/or reports.

Contractor specifically acknowledges and accepts the foregoing Site Conditions and agrees that no Project Guaranteed Date shall be extended, the Contract Price shall not be modified, and Contractor shall not be entitled to request or be granted any Change in Work, as a result of any such Site Conditions. Further, should the Site Conditions be at variance with the condition of the Site indicated by any reports or other information furnished to Contractor by Owner or any of its representatives (including, but not limited

to any unknown physical conditions below the surface of the ground or water differing in any way from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract) neither the Contract Price nor any other Project Guaranteed Dates shall be adjusted, and Contractor shall complete the Work for the Contract Price.

4.39 Non-Conforming Work. If Contractor is notified of or discovers any Defect, Contractor shall, at Contractor's sole cost and expense, correct such Defect and promptly provide Notice to Owner that such corrective measures have been completed. If Contractor discovers a defect in Owner's Engineer's design or engineering, Contractor shall immediately provide Notice to Owner. Any disagreements about the root cause of any Defect shall be resolved in accordance with the provisions of Article 36.

4.40 [Joint and Several Liability]. [The Contractor means each joint venture partner which shall undertake the duties and obligations of the Contractor under this Contract. Each joint venture partner has the duty and obligation, individually, to fully perform all of the duties and obligations of Contractor under this Contract. Owner may enforce the terms of this Contract against one or more joint venture partners, individually or collectively, upon breach of Contractor's performance hereunder. Even though each joint venture partner has assumed the duties and obligations of Contractor under this Contract on a joint and several basis, the Contractor is referred to herein as if singular in number. Without limiting the generality of the foregoing, the Owner shall be entitled to conclusively rely on any Notice or other correspondence received, or performance tendered by a Joint Venture Partner (relating to or in connection with the Project or this Contract) or the Contractor without any duty on the part of Owner to make an inquiry into the authority of the Contractor or such Joint Venture Partner to give such Notice or other correspondence or tender such performance, and any Notice or correspondence delivered or performance taken by one of the Joint Venture Partners (relating to or in connection with the Project or this Contract) or the Contractor shall validly and legally bind the others.] [If applicable.]

5. WARRANTIES AND REPRESENTATIONS

5.1 Of Contractor. Contractor represents and warrants to Owner that:

5.1.1 Organization, Standing and Qualification. Contractor is a _____, duly organized, validly existing and in good standing under the laws of the State of _____, and has, or will have by the date it commences the applicable Work, full power and authority to engage in the business it presently conducts and contemplates conducting in accordance with all Applicable Laws, and is or will be duly licensed or qualified and in good standing under the laws of all states in which Work is to be performed and in each other jurisdiction wherein the nature

of the business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder. Contractor shall furnish Owner with a certified copy of its permit to transact business in each state and other jurisdiction wherein the nature of the business transacted by Contractor makes such licensing or qualification necessary prior to commencing Work under the Contract. Owner may, at its option, withhold from any payment hereunder and remit to the relevant Governmental Authority such sums as are required by Applicable Laws and has provided Owner with a copy of such certificate. In addition, the Owner may, as required by Applicable Laws, withhold the Final Payment of the Contract as a guarantee that sales and use Tax will be paid in the event that Owner has been provided notice by a Governmental Authority pursuant to Applicable Laws to withhold funds. Contractor shall make such returns and pay such Tax on account of payments received under this Contract as Applicable Laws may require, and shall hold Owner harmless on account of its failure to withhold any amount required by Applicable Laws from any payment made hereunder or on account of Contractor's failure to pay any such Tax to a Governmental Authority.

5.1.2 Enforceable Contract. This Contract has been duly authorized, executed and delivered by Contractor and constitutes the legal, valid and binding obligation of Contractor, enforceable against Contractor in accordance with its terms.

5.1.3 Due Authorization. The execution, delivery, and performance by Contractor of this Contract will not violate or conflict with: (a) any Applicable Laws; (b) any covenant, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected; or (c) its organizational documents; and will not subject the Project or any component part thereof or the Site or any portion thereof to any lien other than as contemplated or permitted by this Contract.

5.1.4 Government Approvals. No authorization, approval, exemption, or consent of or by any Governmental Authority or other Person is required in connection with the authorization, execution, delivery, and performance of this Contract by Contractor. The Contractor Acquired Permits either have been obtained by Contractor and are in full force and effect on the Effective date of each Release or will be obtained by Contractor and will be in full force and effect on or prior to the date on which they are required, under Applicable Laws, to be in full force and effect, so as to permit Contractor to commence and prosecute the Work to completion in accordance with the Critical Path Method Schedule.

5.1.5 No Suits, Proceedings. There are no actions, suits, proceedings, or investigations pending or, to Contractor's knowledge, threatened against it at law or in equity before any court (United States or otherwise) or before any Governmental Authority (whether or not covered by insurance) that individually

or in the aggregate could result in any materially adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Contractor or in any impairment of its ability to perform its obligations under this Contract. Contractor has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any court or any Governmental Authority that may result in any such materially adverse effect or such impairment.

5.1.6 Patents. Other than those patents, trademarks, service marks, tradenames, copyrights, licenses, franchises and permits included in Owner Acquired Permits, Contractor owns or has the right to use all patents, trademarks, service marks, tradenames, copyrights, licenses, franchises, and permits necessary to perform the Work without conflict with the rights of others and to enable Owner to operate the Project without infringement thereof.

5.1.7 Business Ethics. Contractor, its employees, officers, agents, representatives and Subcontractors shall at all times maintain the highest ethical standards and avoid conflicts of interest in the performance of Contractor's obligations under this Contract. In conjunction with its performance of the Work, Contractor and its employees, officers, agents and representatives shall comply with, and cause its Subcontractors and their respective employees, officers, agents and representatives to comply with, all applicable laws, statutes, regulations and other requirements prohibiting bribery, corruption, kick-backs or similar unethical practices including, without limitation, the United States Foreign Corrupt Practices Act, the United Kingdom Bribery Act 2010, and Owner Code of Business Conduct attached as Exhibit C-1. Without limiting the generality of the foregoing, Contractor specifically represents and warrants that neither Contractor nor any Subcontractor employees, officers, representatives or other agents of Contractor have made or will make any payment, or have given or will give anything of value, in either case to any government official (including any officer or employee of any governmental authority) to influence his, her, or its decision or to gain any other advantage for Owner or Contractor in connection with the Work to be performed hereunder. Contractor shall maintain and cause to be maintained effective accounting procedures and internal controls necessary to record all expenditures in connection with this Contract and to verify Contractor's compliance with this Article. Owner shall be permitted to audit such records as reasonably necessary to confirm Contractor's compliance with this Article. Contractor shall immediately provide notice to Owner of any facts, circumstances or allegations that constitute or might constitute a breach of this Article and shall cooperate with Owner's subsequent investigation of such matters. Contractor shall indemnify and hold Owner harmless from all fines, penalties, expenses or other losses sustained by Owner as a result of Contractor's breach of this provision. The Parties specifically acknowledge that Contractor's failure to comply with the requirements of this Article shall constitute a condition of default under this Contract.

5.1.8 Owner-Provided Information. Owner or its agents may provide or may have provided Contractor or Subcontractor with copies of certain studies, reports or other information (including oral statements) and Contractor acknowledges that all such documents or information have been or will be provided as background information or as an accommodation to Contractor. Contractor further acknowledges that neither Owner nor any of its agents makes any representations or warranties with respect to the accuracy of such documents or the information (including oral statements) or opinions therein contained or expressed. Contractor further represents and warrants that it is not relying on Owner or Owner's agents for any information, data, inferences, conclusions, or other information with respect to Site Conditions, including the surface and sub-surface conditions of the Site and the surrounding areas.

5.1.9 Financial Condition. Contractor is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete its obligations under this Contract. Contractor is able to perform the Pre-Construction Services, furnish the Equipment, labor, and design services needed for the Project, is experienced in and competent to perform the Work, both construction and design, contemplated by this Contract, and is qualified to do the Work.

5.1.10 [Joint Venture]. [The Contractor is a joint venture and [each joint venture partner] have the power and authority to enter into this Contract. Each [joint venture partner] individually, has the duty and obligation to fully perform all of the duties and obligations of Contractor under this Contract. Any Notice or correspondence delivered or performance taken by one of either [joint venture partner] or the Contractor shall validly and legally bind the others on a joint and several basis.] [If applicable.]

5.1. Of Owner. Owner covenants, represents, and warrants to Contractor that:

5.2.1 Organization, Standing and Qualification. Owner is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Delaware, has full power to engage in the business Owner presently conducts and contemplates conducting, and is and will be duly licensed or qualified and in good standing in each jurisdiction wherein the nature of the business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder.

5.2.2 Enforceable Contract. This Contract has been duly authorized, executed and delivered by Owner and constitutes the legal, valid, and binding obligation of Owner, enforceable against Owner in accordance with its terms.

5.2.3 Due Authorization. The execution, delivery, and performance by Owner of this Contract will not conflict with: (a) any Applicable Laws; (b) any covenant, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected; or (c) its certificate of incorporation or by-laws.

5.2.4 Government Approvals. No authorization, approval, exemption, or consent of or by any Governmental Authority or other Person (other than the Applicable Permits) is required in connection with the execution, delivery, and performance of this Contract by Owner and if not obtained will be obtained by Owner prior to the date on which it is required under Applicable Laws to be in full force and effect. The Owner Acquired Permits either have been obtained by Owner and are in full force and effect on the Effective date of each Release or will be obtained by Owner and will be in full force and effect on or prior to the date on which they are required, under Applicable Laws, to be in full force and effect; and in the event such Owner Acquired Permit is not obtained by the applicable Owner Milestone, Contractor's sole remedy for a breach of the representations in this Section 5.2.4 shall be a Change in Work in accordance with Article 17.

5.2.5 No Suits, Proceedings. There are no material actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court (United States or otherwise) or before any Governmental Authority (whether or not covered by insurance) that individually or in the aggregate could result in any materially adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Owner or in any impairment of its ability to perform its obligations under this Contract. Owner has no knowledge of any violation or default with respect to any order, writ, injunction, or any decree of any court or any Governmental Authority that may result in any such materially adverse effect or such impairment.

5.2.6 Business Practices. Owner will not, and Owner will direct its employees, agents, and subcontractors, and their employees and agents to not, make any payment or give anything of value to any government official (including any officer or employee of any Government Authority) to influence his, her, or its decision or to gain any other advantage for Owner or Contractor in connection with the Work to be performed hereunder. Neither Owner nor any of its employees or agents shall take any action that violates the United States Foreign Corrupt Practices Act or any similar Applicable Laws. Owner shall immediately give Notice to Contractor of any violation (or of the direction described in the first sentence hereof) and shall indemnify and hold Contractor harmless for all Losses arising out of such violation.

6. COST OF WORK

6.1 Contract Price. As full compensation for the Work, Owner shall pay to Contractor the fixed price amount specified in each Release. (the "Contract Price"). The Contract Price shall be modified only by (i) a Change in Work approved in accordance with Article 17, or (ii) per Section 6.1(a).

The Contract Price shall be paid in accordance with Article 7.

6.1.1 Significant Decrease in Market Prices for Key Commodities. Owner shall be entitled to a decrease in the Contract Price, if the price per unit Contractor pays, either directly or indirectly, for aluminum and carbon steel as raw material inputs (not finished products) ("Key Commodities") for the manufacture of conductor wire, engineered poles and lattice towers is less than the Assumed Price, as hereinafter defined. Exhibit "R" identifies the per unit price (the "Assumed Price") for the Key Commodities included by the Contractor as part of its Contract Price. Such Assumed Price is based on certain indexes specified in Exhibit "R". In the event that the price actually paid by Contractor for a Key Commodity ("Actual Price") on a per unit basis is less than the Assumed Price for such Key Commodity by ten percent (10%) or more, as determined through reference to the pertinent index identified in Exhibit "R" and associated purchase documentation, then the Contract Price shall be reduced by an amount equal to one-half the difference between the applicable Assumed Price and the Actual Price multiplied by the actual quantity purchased by Contractor. The Parties agree to review and document the status of any potential Contract Price decrease resulting under this Section 6.1.1 on a quarterly basis and also when Contractor estimates that substantially ninety-five percent (95%) of each Key Commodity have been purchased. Full reconciliation of Key Commodities price adjustment under this Section 6.1.1 shall be documented on a Change in Work form pursuant to Article 17 and shall be a condition precedent to Final Completion. Contractor shall provide owner with any documentation (including materials subcontracts, and purchase orders at any tier of Subcontractor or Supplier) for Owner to confirm existence and extent of Key Commodities price adjustments under this Contract. In addition, Contractor shall use its commercially reasonable efforts to include in its agreements with the Suppliers of the Key Commodities a provision that provides for a purchase price decrease in the event the underlying commodity prices affecting the sale price for such Key Commodity decrease prior to the date such Key Commodities are ordered (or if applicable, the date such Key Commodities are delivered if the price is determined under the applicable agreement as at the time of delivery).

6.2 All Items of Work Included. The Contract Price includes payment for: (a) all costs of Equipment, temporary equipment, materials, labor, transportation, engineering, design (if applicable) and other services relating to Contractor's performance of its obligations under this Contract and the Work (including any intellectual property rights licensed under this Contract, expressly or by implication) provided by Contractor or such Subcontractors; (b) any duties, levies, imposts, fees or charges of any kind (whether in

the United States or elsewhere and including any of the foregoing related to the importation of any items into the United States) arising out of Contractor's or any such Subcontractor's performance of the Work; and (c) any duties, levies, imposts, fees, royalties or charges of any kind (whether in the United States or elsewhere and including any of the foregoing related to the importation of any items into the United States) imposed on Contractor or its Subcontractors with respect to any Equipment, materials, labor, or services provided under this Contract.

6.3 Taxes; Tax Administration and Payment.

(a) Responsibility for Taxes. The Contract Price includes payment for all taxes of any nature whatsoever including all: (i) United States federal, state, regional, and local taxes, national and foreign taxes, goods and services taxes, personal property taxes, sales and use taxes (including sales and use tax on the purchase, sale or use of all materials, supplies, Equipment and machinery); (ii) property taxes on all materials, supplies, equipment and machinery not intended to be transferred to Owner hereunder; (iii) occupational, excise, unemployment, value-added, gross receipts and income taxes; and (iv) any and all other taxes, effective or enacted as of the Effective date of each Release or thereafter, each as imposed on Contractor or its Subcontractors or the Work (collectively referred to as "Taxes"); provided, however, the Contract Price shall not include any real property taxes on the Site or the Project, which shall be borne by Owner. With the exception of real property taxes not included in the Contract Price as described above in this paragraph, the Contract Price shall not be increased with respect to any of the foregoing Taxes or with respect to any withholdings in respect of any of the foregoing Taxes that Owner may be required to make. Calculation of Tax within the Contract Price is the sole responsibility of the Contractor and is provided for informational purposes only. Any errors or omissions in calculating Tax shall be at the Contractor's risk.

(b) Tax Administration and Payment. Contractor shall, in accordance with Applicable Laws, timely administer and timely pay all Taxes that are included in the Contract Price and timely furnish to the appropriate taxing authorities all required information and reports in connection with such Taxes. Contractor shall provide to Owner information to confirm the correct Taxes have been paid on the Work by the Contractor and such further Tax information reasonably requested by Owner.

7. TERMS OF PAYMENT

Payments to Contractor shall be made as follows:

7.1. Contractor's Invoices.

- (a) Following the issuance of a Limited Notice to Proceed, on or about the tenth (10th) day of each month, Contractor shall submit a Contractor's Invoice in the form of Exhibit "F" to Owner for the Progress Payment Amount for Pre-Construction Services performed during such period in accordance with the requirements and provisions set forth in Exhibit "D". Owner shall pay undisputed amounts so invoiced within thirty (30) days.

Each Contractor's Invoice submitted in respect of the Pre-Construction Services shall include Contractor's Partial Release and Waiver of Liens and Claims. The provisions of Article 7 apply to Contractor's Invoices in respect of Pre-Construction Services.

- (b) Following the issuance of a Full Notice to Proceed, on or about the tenth (10th) day of each month, Contractor shall submit a Contractor's Invoice in the form of Exhibit "F" to Owner for the Work performed thereunder in the then immediately preceding month. For clarity, Contractor shall submit invoices for Pre-Construction Services separately from Work performed that is not Pre-Construction Services.

In all cases, Contractor specifically agrees that it shall not request in any Contractor's Invoice the payment of any sum attributable to Work which has been rejected by Owner or Contractor or which otherwise constitutes or relates to a Subcontractor's application for payment, billings or invoices which Contractor disputes or for any other reason does not intend to pay in accordance with the terms of Contractor's agreements with its Subcontractors. Subject to the provisions of this Article 7, Owner shall pay Contractor each Progress Payment described on the Progress Payment Schedule upon Contractor's completion of the corresponding discrete portion of Work.

7.2. Certification by Contractor. Each Contractor's Invoice:

- (a) Shall provide documentary evidence in the form of a written progress report, in accordance with Section 4.27 to describe: (i) the completion of the Work to maintain the Interim Progress Milestones; (ii) the related Progress Payment Schedule and Amounts set forth on the Progress Payment Schedule that are then due as of the end of the immediately preceding month; and (iii) any other amounts then payable by Owner to Contractor under Article 17 or any other provision

hereof and, without limiting Owner's right to dispute any amounts requested for payment;

- (b) Shall include Contractor's Partial Release and Waiver of Liens and Claims; and;
- (c) Shall include the Project Progress Report and Critical Path Method Schedule in accordance with Section 4.26 and Section 4.27, except to the extent they have previously been provided for the applicable month;

It being understood and agreed by Contractor that any Contractor's Invoice not in compliance with the Project Payment Schedule or that has been demonstrated to not be in compliance with the Interim Progress Milestones described in Exhibit "G", and in Exhibit "G" Attachment 9 shall not, to the extent of such deficiency, constitute a valid request for payment. Each Progress Payment Amount shall be due and payable only to the extent it is supported by documentary evidence of compliance with the Interim Progress Milestones set forth in Exhibit "G" Attachment 9, it being acknowledged and understood that no Progress Payment shall be made for any partially or improperly completed individual items of Work or for Work that remains subject to Owner's review and inspection rights in accordance with Section 12.5.

Notwithstanding the foregoing, in no event shall the cumulative amount actually paid with respect to any period of time exceed the maximum cumulative amount payable for such period in accordance with the Progress Payment Schedule.

7.3 Subcontractor Statements. Accompanying each Contractor's Invoice, Contractor shall submit a Partial Release and Waiver of Liens and Claims from each Major Subcontractor whose Work is covered under such Contractor's Invoice.

7.4 Owner Review; Payments. Without limiting Owner's rights of review under Article 10 and Article 12, within fourteen (14) days after receipt by Owner of a Contractor's Invoice and all accompanying documentation required by Section 7.2, Owner shall: (a) determine whether the Interim Progress Milestones described in Exhibit G Attachment 9 remain valid and not subject to the provisions of Section 8.3; (b) determine whether the Work performed conforms with the requirements of this Contract; (c) determine whether the Contractor's Invoice has been properly submitted; and (d) determine and give Notice to Contractor concerning any invoiced amount that is in dispute and the basis for such dispute. Owner will pay Contractor, within thirty (30) days after receipt by Owner of Contractor's Invoice, all Progress Payment Amounts and other amounts then payable and not in dispute. Failure by Owner to pay any amount in dispute and identified pursuant to clause (d) above until resolution of such dispute pursuant to Section 7.7 shall not alleviate, diminish, or modify in any respect Contractor's obligations to perform the Work in accordance with this Contract. Contractor shall promptly pay each Subcontractor directly contracting with Contractor the amount to which said Subcontractor is entitled under its agreement with Contractor with respect to

the Work covered by such payment by Owner in accordance with the terms of its subcontract with such Subcontractor. Contractor shall, by an appropriate agreement with each Major Subcontractor, contractually require each such Subcontractor to make payments to its subcontractors in a similar manner.

7.5 Retainage. Owner shall retain and withhold payment of ten (10%) of all payments made to Contractor pursuant to Section 7.4 (the “Retainage”) other than the Final Payment. Such amount shall be held by Owner and any interest thereon shall accrue for the account of Owner and not Contractor. Alternatively and in lieu of the above, no Retainage will be withheld by Owner provided Contractor posts an irrevocable transferable letter of credit issued for the benefit of the Owner by a Qualified Bank (the “Retainage LOC”) not less than an amount equal to the Retainage (had it been withheld by Owner in accordance with the first paragraph of this Section 7.5).

7.6 Final Payment. Upon the delivery of Owner’s Certificate of Final Completion in accordance with Section 15.5(l), Contractor shall submit a final Contractor’s Invoice (the “Final Contractor’s Invoice”) which shall set forth all amounts due to Contractor that remain unpaid (including amounts relating to the Punchlist Items), and upon approval thereof by Owner, Owner shall pay to Contractor the amount due under such Final Contractor’s Invoice (“Final Payment”). Subject to achievement of Final Completion pursuant to this Contract, Final Payment shall include release of the Retainage or return and cancellation of the Retaining LOC (as applicable). Owner shall have no obligation to make Final Payment until Contractor shall have delivered the following items to Owner:

- (a) With respect to each Major Subcontractor the Final Release and Waiver of Liens and; and
- (b) With respect to Contractor,
 - (i) A certification to the effect that:
 - (x) Contractor has been paid all amounts owing or that may become owing to Contractor with respect to the Project and the performance of the Work except for amounts requested in the Final Contractor’s Invoice, and
 - (y) Contractor has paid all amounts that Contractor will be required to pay in connection with the performance of the Work, including all amounts to be paid to any Subcontractor with respect to the Project and the performance of the Work, except for amounts that in the aggregate shall be less than the Final Payment;
 - (ii) The Final Release and Waiver of Liens and Claims; and
 - (iii) The Warranty LOC.

7.7 Disputes. Contractor's acceptance of any payment shall not be deemed to constitute a waiver of amounts that are then in dispute. Contractor and Owner shall use their reasonable efforts to resolve all disputed amounts as expeditiously as possible in accordance with the provisions of Article 36.

7.8 Method of Payment. All payments to be made to Contractor under this Contract shall be paid in Dollars and shall be paid by electronic funds transfer in immediately available funds on the date due or, if such date is not a Business Day, on the immediately succeeding Business Day to the account as may be designated by Contractor from time to time by Notice to Owner in accordance with Article 33.

7.9 Holdbacks. Any provision hereof to the contrary notwithstanding, upon the occurrence and continuance of any of the following events, Owner, upon Notice to Contractor, may (but shall have no obligation to) withhold or retain such portion of any payment due to Contractor under this Contract to the extent reasonably necessary to ensure the performance of the Work, to cover Owner's reasonable costs to cover such event or otherwise protect fully Owner's rights hereunder:

- (a) A Contractor Event of Default shall have occurred hereunder as defined in Section 20.1;
- (b) Any part of such payment shall be attributable to Work which shall contain a Defect or shall not have been performed in accordance with the terms of this Contract;
- (c) Contractor shall have improperly failed to make prompt payments to its Subcontractors pursuant to the terms of such subcontract for material or labor used in the Work for which Owner has paid Contractor;
- (d) Owner in good faith shall have determined based upon the Critical Path Method Schedule that Contractor cannot with prompt and reasonable acceleration of the Work achieve the Project Guaranteed Dates; provided, however, that the amount withheld or retained on account of this Section 7.9(d) shall not exceed the amount of the Delay Liquidated Damages which would be payable under Article 16 on account of the then estimated delay in achieving the Project Guaranteed Dates;
- (e) Contractor shall have failed to deliver a Schedule Recovery Plan reasonably acceptable to Owner as set forth in Section 8.3, or Contractor shall have failed to cause the prosecution of the Work to conform to the Schedule Recovery Plan approved by Owner; or
- (f) Contractor shall have failed to deliver any Contractor Deliverable (prepared by Contractor in good faith) to Owner on or before the date set forth on the Deliverables Schedule for the delivery of such Contractor Deliverable.

No payment made hereunder shall be construed to be acceptance or approval of that part of the Work to which such payment relates or to relieve Contractor of any of its obligations hereunder. Should any dispute arise with respect to Owner's exercise of its rights under this Section 7.9, such dispute shall be subject to resolution in accordance with the expedited payment dispute procedures provided in Article 36. Notwithstanding the provisions of Section 20.4 and Article 36, Contractor shall not have any rights of termination or suspension under Section 20.4 as a result of Owner's exercise or attempted exercise of its rights under this Section 7.9.

7.10 Application of Monies. Contractor shall use the sums paid to it pursuant to this Article 7 for the purpose of performing the Work and designing, furnishing, equipping, testing and commissioning the Project in accordance with this Contract. No provision hereof shall be construed, however, to require Owner to see to the proper disposition or application of the monies so paid to Contractor.

7.11 Release of Liability. Acceptance by Contractor of the Final Payment shall constitute a release by Contractor of Owner, its Affiliates and every officer and agent thereof from all liens (whether statutory or otherwise and including mechanics' or suppliers' liens), claims and liability with respect to the payment of the Contract Price or any event or circumstance that would entitle Contractor to request a Change in Work in accordance with Article 17 in respect of any Work performed or furnished in connection with this Contract, or for any act or omission of Owner or of any Person relating to or affecting Owner's payment obligations under this Contract, except for unresolved claims for which Contractor has previously delivered a dispute Notice to Owner and claims which are based on facts and/or circumstances that arise only after Final Completion; and further provided that such acceptance shall not constitute a release of Contractor's right to enforce any provision of this Contract that survives termination of this Contract in accordance with Section 37.3. No payment by Owner shall be deemed a waiver by Owner of any obligation of Contractor under this Contract.

7.12 All Payments in Dollars. All amounts in this Contract are expressed in, and all payments required hereunder shall be paid in Dollars.

8. COMMENCEMENT AND PROSECUTION OF THE WORK

8.1. Limited Notices.

- (a) Limited Notice to Proceed. Owner may issue to the Contractor, within each Release a Limited Notice to Proceed to perform specified services and shall pay Contractor in accordance with the terms of Exhibit "D" that are applicable

Prior to the Full Notice to Proceed Date, Contractor shall only perform the activities set forth in a Limited Notice to Proceed. Contractor shall not be entitled to any payment for activities, services, products or other costs or expenses incurred outside of the scope set forth in the Limited Notice to Proceed. Amendments to a Limited Notice to Proceed shall be made in accordance with the provisions of Article 17, *mutatis mutandis*. Owner may terminate a Limited Notice to Proceed at any time, provided that any such termination shall not terminate this Contract nor shall it affect the other rights, obligations or agreements of the Parties set forth in this Contract. Owner shall pay Contractor for the value of Pre-Construction Services completed (or if not completed, the reasonable approximation of the portion that has been completed) as of the date of termination of a Limited Notice to Proceed.

- (b) Materials Notice to Proceed. Owner may issue to Contractor, within each Release a notice to procure certain materials on the Materials Notice to Proceed Date, thus authorizing Contractor to procure the materials required under Exhibit A of each Release.

8.2 Full Notice to Proceed. Owner shall provide Contractor with Notice that Contractor is directed to commence Work under this Agreement ("Full Notice to Proceed") as follows:

- (a) Owner shall inform Contractor of the date Owner reasonably anticipates to issue Full Notice to Proceed, and the date on which Owner provides Contractor with Full Notice to Proceed shall be the Full Notice to Proceed Date; provided, however, that the following shall be conditions precedent to Owner's right (but not obligation) to provide Contractor with Full Notice to Proceed:

(i) Contractor Security. Contractor shall have provided Owner with the Parent Guarantee, the Performance LOC; and

(ii) Insurance Requirements. Owner and Contractor have each obtained the insurance required to be provided by each of them in accordance with the terms of this Contract and shall have provided the other Party reasonable documentation evidencing such insurance effectuation.

- (b) On the Full Notice to Proceed Date, Contractor shall commence and shall thereafter diligently pursue the applicable Work in accordance with the terms of this Contract. Contractor expressly agrees that the period of time specified to complete all Work and the timely achievement of the Project Guaranteed Dates includes an appropriate allowance for all hindrances and delays incidental to the Work and no claim shall be made by Contractor for hindrances or delays for any cause during the progress of the Work, except as provided under Article 9 and Article 17.

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Both Parties have caused an individual with the requisite authority to acknowledge this and each page of this Contract prior to execution.

Contractor: Initial _____

Company: Initial _____

(c) Contractor shall prosecute the Work in accordance with the Critical Path Method Schedule. Contractor shall cause Substantial Completion and Final Completion to occur on or before the applicable Project Guaranteed Dates (as such dates may be extended pursuant to Article 17 or Article 22).

8.3 Schedule Recovery Plan. If Contractor fails, other than by reasons not attributable to Contractor, to stay within the number of days specified in each Release of the schedule (as determined using the Critical Path Method Schedule) for achieving the applicable Project Guaranteed Dates, then Contractor shall, within five (5) days after Contractor becomes aware of such delay, submit for approval by Owner, a written plan (the "Schedule Recovery Plan") to complete all necessary Work to achieve such Project Guaranteed Dates not later than thirty (30) days after the applicable Project Guaranteed Dates, including a revised Critical Path Method Schedule. Within five (5) days after receipt of the proposed Schedule Recovery Plan, Owner shall deliver written approval or disapproval of such plan to Contractor. If Owner disapproves the proposed Schedule Recovery Plan and provides comments to the Schedule Recovery Plan, Contractor shall resubmit a revised Schedule Recovery Plan addressing such Owner comments within five (5) additional days. Review and/or approval by Owner of a Schedule Recovery Plan shall not be deemed in any way to have relieved Contractor of its obligations under this Contract relating to the failure to achieve Substantial Completion or Final Completion by the applicable Project Guaranteed Date, be a basis for an increase in the Contract Price, or limit the rights of Owner under Section 16.1.

9. **FORCE MAJEURE.**

9.1 Events of Force Majeure. No failure or omission to carry out or observe any of the terms, provisions, or conditions of this Contract shall give rise to any claim by any Party against any other Party hereto, or be deemed to be a breach or default of this Contract if such failure or omission shall be caused by or arise out of an event of Force Majeure. No obligations of either Party that were required to be performed before the occurrence of an event of Force Majeure causing the suspension of performance shall be excused as a result of such occurrence. The obligation to pay money in a timely manner shall not be subject to the Force Majeure provisions.

9.2 Notice. If either Party's ability to perform its obligations under this Contract is affected by an event of Force Majeure, such Party shall promptly as reasonably possible, upon learning of such event and ascertaining that it will delay its performance hereunder (but in any event within two (2) Business Days after such Party becomes aware of such delay), give Notice to the other Party (a "Delay Notice") stating the nature of the event, its anticipated duration and effect upon the performance of such Party's obligations, and any action being taken to avoid or minimize its effect. The burden of proof shall be on the Party claiming to be affected pursuant to this Section 9.2.

9.3 Scope of Suspension; Duty to Mitigate. The suspension of performance due to an event of Force Majeure shall be of no greater scope and no longer duration than is required by such event and the effects of such event. The excused Party shall use its reasonable efforts to: (a) mitigate the duration of, and costs arising from, any suspension or delay in the performance; (b) continue to perform its obligations hereunder to the extent unaffected by the Force Majeure event; and (c) remedy its inability to perform. When the affected Party is able to resume performance of its obligation under this Contract, such affected Party shall give the other Party Notice to that effect.

9.4 Removal of Force Majeure. If, within a reasonable time after an event of Force Majeure that has caused Contractor to suspend or delay performance of the Work, action to be undertaken at the expense of Owner has been identified and recommended to Contractor, and Contractor has failed within ten (10) days after receipt of Notice thereof from Owner to commence to take such action as Contractor could lawfully and reasonably initiate to remove or relieve either the Force Majeure event or its direct or indirect effects, Owner may, in its sole discretion and after Notice to Contractor, initiate such reasonable measures as will be designed to remove or relieve such Force Majeure event or its direct or indirect effects and, after such removal or relief has been accomplished, require Contractor to resume full or partial performance of the Work. To the extent Contractor's failure to take such measures results in additional expense in addition to what Owner would have paid to Contractor, had Contractor taken such measures, such additional expense shall be for Contractor's account.

9.5 Responsibility of Contractor. Damages or injuries to Persons or properties resulting from an event of Force Majeure during the performance of the obligations provided for in this Contract shall not relieve the Contractor of the responsibility to bear the cost of the damage or injuries caused by Contractor's negligence or misconduct to the extent such costs are not covered by the insurance described in Article 23.

9.6 Contractor's Remedy. Contractor's sole remedy for the occurrence of an event of Force Majeure shall be an extension of time as determined in accordance with Article 17. Contractor shall not suspend the Work unaffected by Force Majeure pending resolution of the agreement on the extension of time under this Article 17 unless directed by Owner in writing in accordance with Article 22.

10. SUBCONTRACTORS

10.1 Use of Subcontractors; Owner's Right to Object. The Persons (including, where applicable, specific plant locations utilized by such Persons) identified in Exhibit "A" have been pre-approved by Owner for use by Contractor as a Subcontractor for the particular materials, equipment or services as specified in Exhibit "A", and are not

subject to the requirements of this Section 10.1. In the event Contractor desires to use a substitute for any of the Persons (including, where applicable, specific plant locations utilized by such Persons) listed in Exhibit "A", (including if such Person is not a Major Subcontractor) then Contractor shall follow the procedures set forth in Exhibit "A".

Contractor shall follow the procedure set forth in this Section 10.1 with respect to obtaining Owner approval of Major Subcontractors that are not otherwise subject to the procedures set forth in Exhibit "A". Within fifteen days (15) of the effective date of each Release, Contractor shall provide Owner with a list of all anticipated potential Major Subcontractors. Within fifteen (15) Business Days after receipt of such list, Owner shall have the right to advise Contractor of any such potential Major Subcontractor to which it reasonably objects, together with the reasons for such objection. Contractor shall remove from the list any potential Major Subcontractor to which Owner reasonably objects. Owner shall be deemed not to have objected to any potential Major Subcontractor on the list to which Owner does not object within such fifteen (15) Business Day period. Contractor shall have the right to add potential Major Subcontractors to the list subject to the procedures set forth above. Other than for the Persons approved in accordance with Exhibit "A", no Subcontractor for any Equipment, material, component or service in connection with the Work covered by this Section 10.1 shall be engaged by Contractor prior to completion of the review process set forth in this Section 10.1.

10.2 No Approvals; Contractor Responsible for Work. Neither the use by Contractor of any Subcontractors nor the review or failure to object by Owner of any Subcontractor under this Article 10 shall: (a) constitute any approval of the Work undertaken by any such Person; (b) cause Owner to have any responsibility for the actions, the Work, or payment of such Person or to be deemed to be in a contractual or an employer-employee relationship with any such Person; or (c) in any way relieve Contractor of its responsibilities and obligations under this Contract. Contractor shall be responsible for any Work performed by a Subcontractor. In no event shall any act or omission by any Subcontractor constitute an event of Force Majeure except to the extent caused by an event or circumstance that itself constituted an event of Force Majeure. Notwithstanding anything in Article 7 to the contrary, in no event shall Contractor submit or Owner be obligated to review any Contractor's Invoice with respect to work performed by any Major Subcontractor prior to the expiration of the review period provided in Section 10.1.

10.3 Assignment. Each subcontract and purchase order entered into by Contractor with respect to the Work with a Major Subcontractor shall contain a provision in the form of Exhibit "P" consenting to assignment to Owner in the case of a Contractor default.

10.4 Information; Access. Contractor shall furnish such information and access relative to its Subcontractors as Owner may reasonably request. Contractor shall promptly provide Owner with all recall notices, defect notices or other product communications from the Vendors and/or shall require that its Vendors send such notices and communications directly to the Owner.

11. LABOR RELATIONS

11.1 General Management of Employees. Subject to Section 4.16, and notwithstanding the provisions of Section 11.2, Contractor shall retain its rights to exercise and shall exercise its management rights in performing the Work. Such management rights shall include the rights to hire, discharge, promote, and transfer employees; to select and remove foremen or other Persons at other levels of supervision; to establish and enforce reasonable standards of production; to introduce, to the extent feasible, labor saving equipment and materials; to determine the number of craftsmen necessary to perform a task, job, or project; and to establish, maintain, and enforce rules and regulations conducive to safe, efficient and productive operations. Contractor shall plan and conduct its operations so that its employees and Subcontractors of any tier will work harmoniously with Owner's employees and other workers employed on the same or related projects to assure that there will be no delays, work stoppages, excessive labor costs, or other labor difficulties. Contractor shall enforce strict discipline and good order among Contractor's employees and Subcontractors' employees. Contractor shall not permit the employment of any unfit individual or individuals not skilled in the tasks assigned to them.

11.2 Labor Disputes. Contractor shall use, and shall cause each Subcontractor to use, reasonable efforts to minimize the risk of labor related delays or disruption of the progress of the Work. Contractor shall promptly take, and shall cause each Subcontractor to take, any and all reasonable steps that may be available to resolve violations of collective bargaining agreements or labor jurisdictional disputes, including the filing of appropriate processes with any court or administrative agency having jurisdiction to settle, enjoin, or award damages resulting from violations of collective bargaining agreements or labor jurisdictional disputes. Contractor shall advise Owner promptly, in writing, of any actual or threatened labor dispute of which Contractor has knowledge that might materially affect the performance of the Work by Contractor or by any Subcontractors. Notwithstanding the foregoing, the settlement of strikes, walkouts, lockouts or other labor disputes shall be at the discretion of the Party having the difficulty.

11.3 Personnel Documents. Contractor shall ensure that all its personnel and personnel of any Subcontractors performing the Work are, and at all times shall be, in possession of all such documents (including visas, driver's licenses and work permits) as may be required by any and all Applicable Laws.

12. INSPECTION; EFFECT OF REVIEW AND COMMENT

12.1 Inspection and Uncovering Work. Owner shall have the right, but not the obligation, to observe the Work and to inspect any item of Equipment or material, design,

engineering, service, workmanship or any other portion of the Work to be provided hereunder, and Contractor shall make available for review by Owner, and provide to Owner if requested by Owner, all design criteria, system descriptions, Equipment specifications, Drawings and Specifications, design calculations, quality assurance reports, design drawings, shop drawings, Required Manuals, other Contractor Deliverables and other documents relating to the Work as required by this Contract. Owner shall be responsible for all of Owner's (and its representatives') costs and expenses with respect to such inspections.

Contractor shall submit to the Owner a detailed Inspection and Test Plan ("ITP") for each material piece of Equipment within ten (10) days after award of such Equipment purchase agreement and for all material Work to be performed within thirty (30) days of the effective date of each Release which such ITP is to include the inspections and testing requirements as provided in Exhibit "A". The ITP shall include pertinent Vendor manufacturing and construction inspection operations and plans. Owner shall identify to Contractor the Equipment or portions of Work Owner desires to be hold points so that Owner can inspect or witness consistent with the ITP and the Critical Path Method Schedule before such Work can be released for further manufacture, shipment and/or construction. Contractor shall provide Owner with reasonable notice of any such hold points which shall be not less than five (5) Business Days for manufacture and shipment related inspections and not less than three (3) Business Days with respect to on-Site construction-related inspections. If any portion of the Work so identified by Owner is completed and/or covered without Contractor having given Owner the opportunity to inspect such Work consistent with the ITP, Owner shall have the right to have such portion of the Work uncovered or dismantled for inspection. The cost and schedule impact of such uncovering and recovering (or dismantling and reconstruction) shall be borne by Contractor whether the Work is found to be in conformance or nonconformance with this Contract.

In the event Contractor has provided Owner an opportunity to inspect in accordance with the prior paragraph and Owner did not exercise its right to so inspect, or in the event Contractor was not required in accordance with the prior paragraph to provide Owner with an opportunity to inspect, then in either event, Owner shall have the right to have any portion of the Work uncovered or dismantled for inspection upon Notice to Contractor. The cost and schedule impact of such uncovering and recovering (or dismantling and reconstruction) shall be borne by Contractor if the Work contains a Defect; and if the Work is found not to contain a Defect, Contractor shall be entitled to a Change in Work in accordance with Article 17.

12.2 Right to Reject Work. Regardless of whether payment has been made therefor, Owner shall have the right to reject any portion of the Work that contains any Defect. Upon such rejection, Contractor shall promptly remedy, at its sole cost and expense, any Defect that is identified by Owner as giving rise to such rejection.

12.3 General Inspection Rights. Contractor agrees that Owner and its representatives may observe and inspect the Work, any item of Equipment (including Equipment under fabrication), material, service, or workmanship to be provided hereunder and to observe all tests of the Work and the Project (including factory or other tests performed at a location other than the Site). Upon reasonable Notice to Contractor by Owner, Contractor shall allow Owner and its representative's reasonable access to the Work (including Equipment under fabrication) and the Project. Owner also shall be entitled to review all Contractor's Drawings and Specifications or technical details pertaining thereto as reasonably requested by Owner or its representatives. Contractor shall incorporate the review and inspection rights set forth in this Article 12 in all Equipment purchase orders and subcontracts. To facilitate such observations and inspections, Contractor shall maintain at the Site a complete set of all Drawings and Specifications and current Critical Path Method Schedule.

12.4 Deliverables Schedule. Attached to each Release as part of Exhibit "H" is an initial deliverables schedule. Within sixty (60) days after the effective date of each Release, Contractor shall provide a Notice to Owner attaching a schedule identifying all Contractor Deliverables to be delivered to Owner, the deadline for delivery thereof, and Owner's time period for review and comment (in accordance with Section 12.5) with respect thereto, and as updated and revised as required herein (the "Deliverables Schedule") which such schedule shall comply with the requirements set forth in Exhibit "H" and incorporate the initial schedule attached in Exhibit "H". The Deliverables Schedule shall include the Contractor Deliverables and documents (and include the time periods for Owner's or a third party's review) as set forth in Exhibit "A". Thereafter, Contractor shall at least on a monthly basis provide Notice to Owner attaching an updated schedule identifying Contractor Deliverables to be delivered to Owner, the deadline for delivery and Owner's time period for review and comment with respect thereto. Owner shall have the right to promptly review and comment on such Deliverables Schedule. If Owner provides any comments with respect to the Deliverables Schedule to Contractor, then Contractor shall incorporate changes into such Deliverables Schedule addressing such comments, and resubmit the same to Owner. Such incorporation of changes to address Owner's reasonable comments shall not be considered a Change in Work. If Owner fails to comment within ten (10) Business Days after receipt of such Notice, Owner shall be deemed to have accepted the Deliverables Schedule.

The Deliverables Schedule shall provide an Owner's review period of adequate length of time to permit a complete review by Owner based on the nature and extent of items involved and the volume and content of other Contractor Deliverables submitted to Owner during the same period. The Owner review time periods shall be consistent with those set forth in Exhibit "A".

12.5 Owner Review of Documents. Contractor shall submit for review to Owner Contractor Deliverables in accordance with the requirements of Exhibit "A", including the Deliverables Schedule and Exhibit "H". Contractor shall ensure that all such items undergo a comprehensive independent in-house review and approval process before

submission of such items to Owner. After receipt of any Contractor Deliverable, Owner shall have the right, during the time period of fifteen (15) Business Days from the receipt by Owner of such applicable Contractor Deliverable (except to the extent that a different review period is specifically provided for in Exhibit "H") to describe any Defects in the design or other Work identified in such Contractor Deliverable. Notwithstanding anything in Article 7 to the contrary, in no event shall Contractor submit any Contractor's Invoice with respect to Work performed pursuant to any such Contractor Deliverables prior to the expiration of the review period set forth in this Section 12.5. Issuance by Contractor of any purchase orders prior to Owner completing its review shall be at Contractor's own risk.

12.6 Remedy of Defect – Contractor Deliverables. If Owner identifies any Defect in the design with respect to any Contractor Deliverables submitted for review, then Contractor shall incorporate changes into such Contractor Deliverables addressing and remedying the Defect and resubmit the same to Owner, and such incorporation of changes to address Owner's comments shall not be considered a Change in Work. No Contractor Deliverable subject to this Section 12.6 shall be released for use in connection with the Work prior to completion of the review process set forth in Section 12.5.

12.7 Limitation on Owner's Obligations. Inspection, review, acknowledgement, acceptance, approval or comment by Owner or any of its representatives, with respect to any subcontract or purchase order or any Drawings and Specifications, Contractor Deliverables, samples, and other documents, or any other Work or services performed by Contractor or any Subcontractor, is solely at the discretion of Owner and shall not in any way affect or reduce Contractor's obligations to complete the Work in accordance with the provisions of this Contract or be deemed to be a warranty or acceptance by Owner with respect to such Work.

13. FOUNDATION COMPLETION AND PROJECT MECHANICAL COMPLETION OF THE WORK

13.1 Foundation Completion. Contractor shall achieve Foundation Completion with respect to each individual foundation that is part of the Work. Foundation Completion with respect to an individual foundation means the achievement of the following milestones:

- (a) Such foundation is mechanically completed and installed in accordance with the Scope of Work;
- (b) Such foundation is structurally complete and contains all necessary embedded inserts;

- (c) The concrete portion of such foundation has cured so as to have achieved the minimum strength necessary to allow assembly, erection and installation of the tower thereon;
- (d) Backfilling of the area surrounding such foundation has been completed;
- (e) All of the crane hardstandings and tower erection lay-down and work areas have been completed in accordance with the construction plan approved under this Contract;
- (f) Contractor has provided sketches of each foundation and the tower (both above-ground and below-ground in the immediately surrounding area);
- (g) Embedded grounding material has been installed and ground grid analysis has been completed;
- (h) All coatings and grout required pursuant to Exhibit "A" have been installed; and
- (i) Owner has accepted or is deemed to have accepted a Foundation Completion Certificate with respect to such Work pursuant to Section 13.3.

13.2 Project Mechanical Completion. The following are conditions precedent to Project Mechanical Completion:

- (a) Contractor shall have achieved Foundation Completion for each foundation that is part of the Project;
- (b) The Project and each sub-system of the Project, in each case to the extent required for commissioning, initial operation, adjustment and testing is mechanically, electrically, and structurally constructed in accordance with the requirements of this Contract, the Scope of Work and Industry Standards, including completion of the Mechanical Completion Tests in accordance with the Mechanical Completion Test Procedures;
- (c) The Project and each sub-system of the Project may be commissioned and operated without damage to the Project or the Site and any sub-system or any other property on or off the Site, and without injury to any Person;
- (d) The Project and each sub-system of the Project is functionally complete to the extent necessary for commissioning, initial operation, adjustment, and testing; and

- (e) Owner has accepted or is deemed to have accepted a Project Mechanical Completion Certificate with respect to such Work pursuant to Section 13.4.

13.3 Achievement of Foundation Completion When Contractor believes that it has achieved Foundation Completion it shall deliver to Owner a completed Foundation Completion Certificate. Such certificate shall include the results of all testing relevant to achievement of such milestone and otherwise contain a report in a form reasonably acceptable to Owner and with sufficient detail to enable Owner to determine that Contractor has achieved Foundation Completion. The report shall include, but not be limited to, the following:

- (a) An organized submittal for each foundation in both electronic and hard copy format including, but not limited to, the following:
 - a. Those items identified in Section 13.1 (f);
 - b. foundation excavation report;
 - c. open hole inspection report (if applicable);
 - d. concrete placement log, including concrete batch tickets;
 - e. direct embed installation report;
 - f. foundation installation report;
 - g. anchor bolt foundation installation report;
 - h. structure grounding and resistance measurement;
 - i. steel mill certificates;
 - j. compressive strength report
 - k. non-destructive testing / discrepancy resolution report
- (b) The ground grid analysis referred to in Section 13.1 (g) in its native file format;
- (c) Other documentation as requested by Owner to verify completion of those items identified in Section 13.1.

Owner shall, within ten (10) Business Days, following receipt of a Foundation Completion Certificate, either: (a) deliver to Contractor a countersigned Foundation Completion Certificate, indicating its acceptance of the achievement of such milestone; or (b) if reasonable cause exists for doing so, notify Contractor in writing that such milestone has not been achieved, stating in detail the reasons therefor. If Owner delivers the notice under the preceding clause (b), Contractor promptly shall take such action, including the performance of additional Work to achieve such milestone, and upon completion of such actions shall issue to Owner another notice with respect to such milestone pursuant to this Section 13.2. Such procedure shall be repeated as necessary until such milestone has been achieved. For all purposes of this Agreement, the date of achievement of Foundation Completion shall be the date on which Contractor delivers to Owner the Foundation Completion Certificate that Owner ultimately accepts or is deemed to

have accepted or pursuant to a determination under the dispute resolution procedures, should have accepted. If Owner fails to respond to Contractor's submitted Foundation Completion Certificate within the time set forth above, such Certificate shall be deemed accepted by Owner on the date submitted by Contractor. Any disputes regarding the existence or correction of any such alleged deficiencies shall be resolved pursuant to Article 36.

13.4 Achievement of Project Mechanical Completion When Contractor believes that it has achieved Project Mechanical Completion it shall deliver to Owner a completed Project Mechanical Completion Certificate. Such certificate shall include the results of all testing relevant to achievement of such milestone and otherwise contain a report in a form reasonably acceptable to Owner and with sufficient detail to enable Owner to determine that Contractor has achieved Project Mechanical Completion.

Owner shall, within ten (10) Business Days, following receipt of a Project Mechanical Completion Certificate, either: (a) deliver to Contractor a countersigned Project Mechanical Completion Certificate, indicating its acceptance of the achievement of such milestone; or (b) if reasonable cause exists for doing so, notify Contractor in writing that such milestone has not been achieved, stating in detail the reasons therefor. If Owner delivers the notice under the preceding clause (b), Contractor promptly shall take such action, including the performance of additional Work to achieve such milestone, and upon completion of such actions shall issue to Owner another notice with respect to such milestone pursuant to this Section 13.4. Such procedure shall be repeated as necessary until such milestone has been achieved. For all purposes of this Agreement, the date of achievement of Project Mechanical Completion shall be the date on which Contractor delivers to Owner the Project Mechanical Completion Certificate that Owner ultimately accepts or is deemed to have accepted or pursuant to a determination under the dispute resolution procedures, should have accepted. If Owner fails to respond to Contractor's submitted Project Mechanical Completion Certificate within the time set forth above, such Certificate shall be deemed accepted by Owner on the date submitted by Contractor. Any disputes regarding the existence or correction of any such alleged deficiencies shall be resolved pursuant to Article 36.

14. TESTS AND TESTING

14.1 Test Procedures. Contractor shall: (i) provide for Owner's review and approval detailed Mechanical Completion Test Procedures in accordance with the requirements for testing, documenting and satisfactorily achieving each Acceptance Requirement, as set out in Exhibit "A" not less than one hundred and twenty (120) days prior to the start of testing and such Mechanical Completion Test Procedures must be agreed upon by

Contractor and Owner at least sixty (60) days prior to the commencement of testing with the Test Procedures clearly indicating when in the testing schedule Interconnection will be required; and (ii) keep the Project Representative apprised of the specified schedule and changes thereto for the commencement and performance of such activities.

14.2 Conduct of Tests. The representatives of Owner and Owner's Engineer shall have the right, but not the obligation, to be present during any tests performed by Contractor under this Contract.

14.3 Test Schedules. A projected schedule shall be provided by Contractor with submission of Mechanical Completion Test Procedures required in Section 14.1 and agreed to at least thirty (30) days prior to the anticipated start of the applicable Tests. Contractor shall provide Owner at least ten (10) days' prior Notice thereof prior to performing such tests. The Contractor shall keep the Project Representative apprised of the specified schedule, and changes therein, for the commencement and performance of such tests, and shall give the Project Representative at least five (5) Business Days' prior Notice of the re-performance of any such tests. A test conducted by the Contractor without the required Notice to Owner shall not be valid for the purposes of this Contract.

14.4 Owner Testing. Owner shall provide Notice to Contractor of any construction deficiencies identified during any Owner Testing as soon as practicable but no later than five (5) days after identification of the deficiency and in all cases not later than fifteen (15) days prior to the Substantial Completion Guaranteed Date.

15. SUBSTANTIAL COMPLETION AND FINAL COMPLETION

15.1 Substantial Completion. Substantial Completion shall be achieved when:

- (a) Contractor shall have achieved Foundation Completion for each foundation that is part of the Project;
- (b) The Project and each sub-system of the Project, in each case to the extent required for commissioning, initial operation and adjustment is mechanically, electrically, and structurally constructed in accordance with the requirements of this Contract, the Scope of Work and Industry Standards, including completion of all testing required in Exhibit A;
- (c) The Project and each sub-system of the Project may be commissioned and operated without damage to the Project and any sub-system or any other property on or off the Site, and without injury to any Person;

- (d) The Project and each sub-system of the Project is functionally complete to the extent necessary for commissioning, initial operation, adjustment and testing;
- (e) Owner has received copies of all Contractor Acquired Permits required for operation of the Project;
- (f) Contractor has certified by Notice to Owner that it has administered the training required by Section 4.22;
- (g) Owner has received all Contractor Deliverables due prior to Substantial Completion in accordance with the terms of this Contract;
- (h) The Punchlist and a schedule and budget for completion of each Punchlist Item, in each case reasonably satisfactory to Owner, have been developed by Contractor and delivered to Owner;
- (i) All Work other than those Punchlist Items shown on the Punchlist or Work which by its nature is to be performed after Substantial Completion has been completed by Contractor;
- (j) The Project as a whole may be operated in accordance with Industry Standards and manufacturers' warranties without damage to the Project or any sub-system or part thereof or any other property on or off the Site and without injury to any Person;
- (k) No Contractor Event of Default exists;
- (l) All other Work except for the Punchlist,, which is not part of the Work necessary to commission, test, start-up and operate the Project, has been completed in accordance with Industry Standards and manufacturers warranties and can be utilized and function without damage to the Work, the Site or any other property on or off the Site and without injury to any Persons; and all Applicable Permits with respect to such Work have been provided to Owner; and
- (m) Owner has accepted or is deemed to have accepted a Substantial Completion Certificate with respect to such Work pursuant to Section 15.2.

15.2 Achievement of Substantial Completion. When Contractor believes that it has achieved Substantial Completion, it shall deliver to Owner a completed Substantial Completion Certificate. Such certificate shall include the results of all testing relevant to achievement of such milestone and otherwise contain a report in a form reasonably acceptable to Owner and with sufficient detail to enable Owner to determine that

Contractor has achieved Substantial Completion. Owner shall, within ten (10) Business Days following receipt of such certificate, either: (a) deliver to Contractor a countersigned Substantial Completion Certificate indicating its acceptance of the achievement of such milestone; or (b) if reasonable cause exists for doing so, notify Contractor in writing that such milestone has not been achieved, stating in detail the reasons therefor. If Owner delivers the notice under the preceding clause (b), Contractor promptly shall take such action, including the performance of additional Work to achieve such milestone, and upon completion of such actions shall issue to Owner another Notice with respect to such milestone pursuant to this Section 15.2. Such procedure shall be repeated as necessary until such milestone has been achieved. For all purposes of this Agreement, the date of achievement of Substantial Completion shall be the date on which Contractor delivers to Owner the Substantial Completion Certificate that Owner ultimately accepts or is deemed to have accepted or, pursuant to a determination under the dispute resolution procedures, should have accepted. If Owner fails to respond to Contractor's submitted Substantial Completion Certificate within the time set forth above, such Certificate shall be deemed accepted by Owner on the date submitted by Contractor. Any disputes regarding the existence or correction of any such alleged deficiencies shall be resolved pursuant to Article 36.

15.3 [Reserved.]

15.4 [Reserved.]

15.5 Final Completion. Final Completion of the Work and the Project shall be deemed to have occurred only if and when all of the following have occurred:

- (a) Contractor has achieved Substantial Completion in accordance with Section 15.2;
- (b) Owner has received at least one (1) hard copy and one (1) electronic copy of legible and complete as-built documentation, calculations, test data, performance data, Equipment descriptions, Required Manuals, training aids, Spare Parts lists, and other technical information each as required hereunder for Owner to start up, operate, commission, and maintain the Project;
- (c) All tools and Spare Parts purchased by Contractor to replace those used by Contractor during commissioning have been purchased for delivery to Owner free and clear of liens;
- (d) All Contractor's and Subcontractors' personnel, supplies, tools, equipment, machinery, surplus materials, waste materials, rubbish, and temporary facilities to which Owner does not hold title have been removed from the Site, and any permanent facilities used by Contractor and the Site have been restored in accordance with the terms of the Contract. All

cleanup and disposal shall be conducted in accordance with all Applicable Laws;

- (e) Owner has received from Contractor all information requested by Owner and required for Owner's final fixed asset records with respect to the Project in accordance with Section 4.9;
- (f) Contractor has paid Owner all amounts due hereunder and not in dispute;
- (g) Contractor has assigned to Owner or provided Owner with all warranties or guarantees that Contractor received from Subcontractors to the extent Contractor is obligated to do so pursuant to Section 18.6;
- (h) The Punchlist Items have been completed to the satisfaction of Owner;
- (i) Contractor has delivered the certifications, Final Release and Waiver of Liens and Claims, or the bonds, in accordance with Section 7.6 and has delivered such other documents and certificates as Owner has reasonably requested to ensure compliance with all Applicable Laws;
- (j) Contractor has, within 60 days of the Substantial Completion Date, provided a detailed list of quantities by Property Retirement Unit (PRU) for each Pricing Schedule Item shown in Exhibit "Y". The material and installation costs for major pieces of equipment should be broken out separately. Examples of this equipment are identified in Exhibit "Y". For transmission, the final quantities shall match the final schedule of values updated by Contractor in accordance with Exhibit "D". In addition for transmission, Exhibit "Y" identifies specific information that will be submitted by Contractor in an electronic format acceptable to Company;
- (k) RESERVED
- (l) Owner has accepted or is deemed to have accepted a Final Completion Certificate pursuant to Section 15.6.

15.6 Achievement of Final Completion. When Contractor believes that it has achieved Final Completion, it shall deliver to Owner a completed Final Completion Certificate. Such certificate shall include the results of all testing relevant to achievement of such milestone and otherwise contain a report in a form reasonably acceptable to Owner and with sufficient detail to enable Owner to determine that Contractor has achieved Final Completion. Owner shall, within twenty (20) Business Days following receipt of such certificate, either: (a) deliver to Contractor a countersigned Final Completion Certificate indicating its acceptance of the achievement of such milestone; or (b) if reasonable cause exists for doing so, notify Contractor in writing that such milestone has not been achieved, stating in detail the reasons therefor. If Owner delivers the notice under the

preceding clause (b), Contractor promptly shall take such action, including the performance of additional Work to achieve such milestone, and upon completion of such actions shall issue to Owner another notice with respect to such milestone pursuant to this Section 15.6. Such procedure shall be repeated as necessary until such milestone has been achieved. For all purposes of this Agreement, the date of achievement of Final Completion shall be the date on which Contractor delivers to Owner the Final Completion Certificate that Owner ultimately accepts or is deemed to have accepted or, pursuant to a determination under the dispute resolution procedures, should have accepted. If Owner fails to respond to Contractor's submitted Final Completion Certificate within the time set forth above, such Certificate shall be deemed accepted by Owner on the date submitted by Contractor. Any disputes regarding the existence or correction of any such alleged deficiencies shall be resolved pursuant to Article 36.

15.7 Contractor's Access After Substantial Completion. Following Substantial Completion, Owner shall provide Contractor with reasonable and timely access subject to the terms of this Contract to complete Punchlist Items and to satisfy the other requirements for Final Completion; provided, however, Owner shall not be obligated hereunder to shut down, reduce or otherwise interfere with its operation of the Project or the Transmission Grid as a direct or indirect result of allowing Contractor access pursuant to this Section 15.7. Owner will: (a) provide Contractor with reasonable advance Notice of any extended scheduled outages of the Project or the Transmission Grid and the expected duration thereof; and (b) cooperate with Contractor with regard to reasonable requests by Contractor for access during such extended scheduled outages of the Project or the Transmission Grid.

16. DELAY DAMAGES

16.1 Liquidated Damages for Delay. Contractor understands that if the Substantial Completion does not occur on or before the Substantial Completion Guaranteed Date or if the operation of the Transmission Grid is interrupted or otherwise affected, Owner will suffer substantial damages, including, potentially, additional interest and financing charges on funds obtained by Owner to finance the Work, reduction of the return on Owner's equity investment in the Project, and other operating and construction costs and charges. Therefore the following liquidated damages, collectively the "Delay Liquidated Damages", shall be payable by Contractor to Owner:

16.1.1. Project Mechanical Completion Delay LDs. Contractor agrees that, if Project Mechanical Completion is not achieved by the applicable Project Mechanical Completion Guaranteed Date, Contractor shall pay liquidated damages ("Project Mechanical Completion Delay LDs") in the amount as specified in each Release per day for each day by which the Project Mechanical Completion Date is delayed

16.1.2. Substantial Completion Delay LDs. Contractor agrees that, if Substantial Completion is not achieved by the applicable Substantial Completion Guaranteed Date, Contractor shall pay liquidated damages (“Substantial Completion Delay LDs”) in the amount as specified in each Release per day for each day by which the Substantial Completion Date is delayed. Substantial Completion Delay LD’s will be in addition to the Project Mechanical Delay LD’s, where Project Mechanical Completion Date has not been achieved by the date of Substantial Completion Guaranteed Date, and until the date of accepted Project Mechanical Completion.

Delay Liquidated Damages will not be assessed to the extent that the failure to meet the dates is attributable is caused by an Owner caused delay.

16.1.3. Transmission Grid Interference. Contractor agrees to pay liquidated damages in the amount as specified in each Release, per day, per transmission line for each day that a transmission line which is a part of the Transmission Grid is out of service or materially interfered with prior to Final Completion, to the extent of a Contractor Cause.

16.1.4. Proration of Daily Amounts. Notwithstanding that the liquidated damage amounts set forth in this Section 16.1 are identified on a per day basis, the actual amount of liquidated damages will be determined and be payable on an hourly basis; and the amount per hour is determined by dividing the per day amount by twenty-four.

16.2 Payment of Liquidated Damages. Any amount Contractor is obligated to pay to Owner under Section 16.1 shall be due and payable ten (10) days after receipt of a written request therefor from Owner.

16.3 Offset. If Contractor is obligated to pay any amount to Owner pursuant to this Article 16 and such amount is not paid within the time period referred to in such Section, then Owner shall have the right to offset any such amount against any amount then or thereafter due from Owner to Contractor under this Contract and to exercise its rights against any security provided by or for the benefit of Contractor in such order as Owner may elect in its sole discretion.

16.4 Sole and Exclusive Remedy. Contractor and Owner agree that Owner’s actual damages in the event of delays in achieving completion of the various parts of the Project would be extremely difficult or impracticable to determine and that, after negotiation, Owner and Contractor have agreed that the Delay Liquidated Damages set forth in Section 16.1 are a reasonable estimate of the damages that Owner would incur as a result of such delays or failures and are not intended in any way to be a penalty. Subject to Article 35, the amounts payable under Section 16.1 and, if such failure constitutes a

Contractor Event of Default the remedies provided for in Article 20, shall be Owner's sole remedies for delays in achieving Substantial Completion by the Substantial Completion Guaranteed Date; and interruption or interference with the Transmission Grid as provided in Sections 16.1.2.

17. CHANGES IN THE WORK

17.1. Change in Work. A Change in Work may result only from any of the following:

- (a) A Change in Work required by Owner in writing, including an acceleration of Work, in accordance with Section 17.2;
- (b) A Change in Work as provided in Section 4.33(d) (Hazardous Materials);
- (c) A Change in Work relating to Owner Acquired Permits as provided in Section 4.15;
- (d) A Change in Work as provided in Section 12.1 (uncovering non-defective Work);
- (e) A Change in Law;
- (f) An Owner Caused Delay;
- (g) Such other event which pursuant to the terms of this Contract expressly permit Contractor to obtain a Change in Work in accordance with this Article 17.

A Change in Work may result from an event of Force Majeure but Contractor's sole remedy for the occurrence of an event of Force Majeure shall be an extension of time in accordance with Section 9.6 and Section 17.4.3.

17.2 By Owner. Owner may request a Change in Work, whether such changes are modifications, alterations, decelerations, additions, or deletions. Upon receipt of such Notice, Contractor shall prepare and provide Owner with a completed Change in Work form identified in Exhibit "E" within fifteen (15) Days thereafter. All such changes shall be made in accordance with this Article 17 and shall be considered, for all purposes of this Contract, as part of the Work.

17.3 By Contractor. Contractor shall only be entitled to request a Change in Work to the extent permitted in Section 17.1 upon a) delivery by Contractor to Owner of a written notice of its intention to submit a request for a Change in Work within five (5) Business Days after the date that Contractor becomes aware of the event or condition giving rise to the entitlement to a Change in Work, and b) Contractor prepares and provides Owner with a completed Change in Work form identified in Exhibit "E" within fifteen (15) Days thereafter.

17.4 Adjustments to the Contract.

17.4.1 Adjustments to Project Schedule. If Owner directs a Change in Work in accordance with Section 17.2, or if Contractor is entitled to request a Change in Work in accordance with Section 17.3, and if (in either case) as a result, Contractor shall be actually and demonstrably delayed in the performance of a Critical Path Item as scheduled in the Critical Path Method Schedule, then Contractor may request a Change in Work and upon such request, the Critical Path Method Schedule (and each Project Guaranteed Date referenced therein) shall be extended by the period of time that Contractor is actually and demonstrably delayed in the performance of a Critical Path Item. Owner shall have the right, in lieu of extending a Project Guaranteed Date, to direct Contractor to accelerate the Work in accordance with Section 17.2.

17.4.2 Adjustments to the Contract Price. If Owner directs a Change in Work in accordance with Section 17.2, or if Contractor is entitled to request a Change in Work in accordance with Section 17.3, and if (in either case) such Change in Work impacts Contractor's costs of performing the Work, then an equitable adjustment to the Contract Price shall be made. Where Contractor is entitled to an equitable adjustment, and where Exhibit R, as applicable, provides unit price rates with respect to the applicable Change in Work, the Contract Price shall be adjusted solely in accordance with the unit price Change in Work rates set forth in Exhibit R, as applicable. Without limiting the generality of the forgoing, unit price rates shall be the sole basis for equitable price adjustments with respect to Changes in Work requiring: route changes with respect to the transmission line, transmission line pole relocations, additions of transmission pole structures, changes in transmission pole structure types, changes in foundation types and/or changes in access road routes or configurations. For the avoidance of doubt, Contractor shall not be entitled to any relocations as described in Exhibit R, as applicable, unless provided by Owner as a result of an Owner directed Change in Work in accordance with Section 17.2. Any determinations regarding the need to change transmission pole structure types or foundation types shall be determined in accordance with Exhibit R, as applicable. For Changes in Work for which no unit price rates are provided in Exhibit R, then the Contract Price shall be changed to reflect the amount of increased or decreased costs at such other fixed price, unit rate, time and materials rates or other rates as the Parties may agree; provided, however, that, to the extent reasonably possible, such equitable adjustments to the Contract Price shall be consistent with commodity cost, equipment cost, labor cost, resource staffing requirements, overhead, profit, and other assumptions embedded in the unit price Change in Work rates for analogous work as set forth in Exhibit R. Owner may direct the Contractor to proceed with the Change in Work pending negotiation of a Change in Work Form by issuing a written unilateral directive (which shall be considered a Change in Work Form for

purposes of Section 17.7.2) and Contractor shall continue with the performances of Work.

17.4.3 Adjustments to the Progress Payment Amounts or Progress Payment Schedule. If Owner directs a Change in Work in accordance with Section 17.2, or if Contractor is entitled to request a Change in Work in accordance with Section 17.3, and if (in either case) such Change in Work impacts Contractor's costs or schedule for performing the Work, then (a) an equitable adjustment to the Contract Schedule shall be made in accordance with Section 17.4.1; (b) an equitable adjustment to the Contract Price shall be made in accordance with Section 17.4.2. If either or both equitable adjustment(s) entitle the Contractor to a change in any of the Interim Progress Milestone, Progress Payment Amount or Progress Payment Schedule then the Contractor shall be solely responsible for applying to the Owner for written authorization of an equitable adjustment of such item(s) as they may apply by providing all relevant and necessary supporting documentation and analysis to permit the Owner to provide a decision in such matters. The Owner shall review such application in a timely manner and mutually agree within 30 days with the Contractor revisions to the Interim Progress Milestones, Progress Payment Amounts and Progress Payment Schedule as they may apply.

17.4.4 Force Majeure. Upon the occurrence of an event of Force Majeure, if Contractor shall be actually, demonstrably and materially delayed in the performance a Critical Path Item as scheduled in the Critical Path Method Schedule as a result of such event or circumstance, then Contractor may request a Change in Work under which the Project Guaranteed Dates shall be extended by the period of time Contractor is so actually and demonstrably delayed in the performance of a Critical Path Item and as set forth in the Change in Work Form accepted by Owner, but there shall be no change to the Contract Price.

17.4.5 Reduction In Cost. If a Change in Work involves a reduction in the cost to perform the Work including a reduction in the use of less labor resulting in reduced labor costs, there shall be a lump-sum deduction from the Contract Price, which deduction will be based on unit price rates set forth in Exhibit R. For Changes in Work for which no unit price rates are provided in Exhibit R then the Contract Price shall be reduced by the amount that Contractor has in its budget for the Work involved, inclusive of direct and indirect costs, overhead, margins, contingencies and fees.

17.4.6 Other Terms and Conditions to Apply. Subject to the equitable adjustments to price and schedule contemplated in this Article 17, all Changes in Work shall continue to be subject to the terms and conditions of this Contract including terms and conditions allocating Project risks between the Parties.

17.5. [RESERVED].

17.6 Disputes. If there is a dispute between the Parties about a request for a Change in Work by either Party under this Article 17, such dispute shall be resolved in accordance with Article 36. Notwithstanding any provision of this Article 17 to the contrary, the Parties will execute a Change in Work to reflect the resolution of such dispute.

17.7 Procedures.

17.7.1 Contractor's Estimate. Contractor shall, as soon as practicable after notification or becoming aware of such an event, prepare and deliver to Owner a detailed statement of the proposed Change in Work setting forth: (a) a description of the work covered by such Change in Work; (b) a detailed estimate of the cost (identifying labor, equipment, material costs and other expenses) and the estimated time required to implement the Change in Work and a quote for a firm price; and (c) the impact such Change in Work would have on (i) the Progress Payment Schedule; (ii) the Critical Path Method Schedule; (iii) the Project Guaranteed Dates; (iv) the Warranties; (v) the costs of operation and maintenance of the Project following Substantial Completion; and (vi) any other obligations of either Party of this Contract. Contractor shall not charge Owner for the costs of preparing the Change in Work Form unless the Change in Work Form is not implemented.

17.7.2 No Unapproved Scope Changes. In no event shall Contractor be entitled to undertake or be obligated to undertake any Change in work until Contractor has received a Change in Work Form submitted by Contractor and accepted by Owner and, in the absence of such Change in Work Form, if Contractor undertakes any Changes in Work, Contractor shall make any such Changes in Work at Contractor's sole risk and expense and Contractor shall not be entitled to any payment or other relief under the Contract for undertaking such changes.

17.7.3 Failure to Comply with Notice Requirements. In the event Contractor does not provide Notice within the five (5) Business Days of the date Contractor became aware of the facts or circumstances that permit Contractor to seek a Change In Work permitted under this Article 17 as required by Section 17.3, Contractor shall not be entitled to a Change In Work under this Article 17 or any other relief hereunder.

17.8 No Suspension. Contractor shall not suspend the Work pending resolution of any proposed Change in Work unless directed by Owner in writing in accordance with Article 22. Contractor's rights in the cases of a dispute involving a proposed Change in Work (or the equitable adjustments related to a proposed Change in Work) shall be as set forth in Section 17.4 and Article 36.

18. WARRANTIES CONCERNING THE WORK

18.1 Project Warranties. During the Warranty Period, Contractor warrants and guarantees with respect to the Project (the “Project Warranties”) that all Work shall conform to the Materials Warranty set out in Section 18.2 and that all Work (other than Work covered by the Materials Warranty), including the Pre-Construction Services, the design and construction of the Project and the installation of the Equipment shall be: (a) in accordance with Industry Standards; (b) free from Defects; (c) in conformance with all applicable requirements of this Contract; and (d) safe and fit for Owner’s use as part of the Transmission Grid as set forth in this Contract. In addition, with respect to Pre-Construction Services, Contractor shall perform the Pre-Construction Services in accordance with the scope set forth in the Limited Notice to Proceed and using the standards of care, skill, and diligence normally provided by a professional in the performance of similar services, and shall comply with all laws, codes and standards applicable to the Pre-Construction Services.

18.2 Materials Warranty. During the Warranty Period, Contractor further warrants that all Equipment and other items furnished by Contractor and any Subcontractors hereunder shall be new and of good and suitable quality when installed, shall conform to the requirements of this Contract, including the Scope of Work, shall be free from any charge, lien, security interest or other encumbrance and shall be free of any Defects (the “Materials Warranty”). If requested by Owner, Contractor shall provide Owner with satisfactory evidence that any item(s) of Equipment satisfy the Materials Warranty. As part of the Materials Warranty, Contractor specifically covenants that all rights and benefits which Contractor possesses with regard to warranty obligations of any manufacturer of Equipment shall be fully available to or assigned to Owner.

18.3 Warranty Period. The “Warranty Period” for the Work shall be as follows:

- (a) With respect to the Work relating to the transmission line and associated communication facilities (including the foundations, poles, arms, insulators, conductors, Optical Ground Wires and shield wires), a period of years from the Substantial Completion Date as specified in each Release.

Contractor shall have no liability under Section 18.1 or 18.2 from and after the end of the Warranty Period (as such period may be extended in accordance with the terms hereof); provided, however, that the Warranty Period for any item or part required to be repaired, corrected or replaced following discovery of a Defect during the original Warranty Period shall be extended from the time of such repair, correction or replacement for a period that in no event shall extend beyond

a date that is five (5) years after expiration of the Warranty Period specified in each Release.

18.4 Enforcement After Expiration. Commencing on the expiration of the Warranty Period, or such later date as is provided in Section 18.3, Owner shall be responsible for enforcing all representations, warranties, and guarantees from Subcontractors, and Contractor shall provide reasonable assistance to Owner, on a reimbursable basis, in enforcing such representations, warranties, and guarantees, when and as reasonably requested by Owner. In addition, prior to the expiration of each respective Warranty Period, or such later date as is provided in Section 18.3 with respect to Work required to be re-performed, Owner, at its option and upon prior written Notice to Contractor, may enforce any such warranty against any Subcontractor if: (a) Owner determines that Contractor has not enforced such warranty against the Subcontractor in a timely and diligent manner or performed the warranty work itself, or (b) a Contractor Event of Default exists and owner has taken actions to terminate this Contract in accordance with the terms hereof.

18.5 Exclusions. The Project Warranties and Materials Warranty set forth in Section 18.1 and Section 18.2 shall not apply to damage to any Equipment to the extent such damage is caused by:

- (a) Owner's failure to operate and maintain such Equipment in accordance with Industry Standards;
- (b) Owner's operation of such Equipment in excess of the operating specifications for such Equipment;
- (c) The use of parts or consumables in the repair or maintenance of such Equipment that are not in accordance with Industry Standards;
- (d) Any event of Force Majeure; or
- (e) Normal wear and tear.

18.6 Subcontractor Warranties. Without in any way derogating from Contractor's own representations and warranties with respect to all of the Work, Contractor shall use its reasonable efforts: (a) to obtain from all Subcontractors (including Vendors) any representations, warranties, guarantees, and obligations offered by such Subcontractors; and (b) to attempt to negotiate warranty periods longer than the Warranty Periods at no additional cost to Contractor with respect to design, materials, workmanship, Equipment, tools, supplies and other items furnished by such Subcontractors. All representations, warranties, guarantees, and obligations of such Subcontractors shall be assigned to Owner, in accordance with the provisions of this Contract, including Exhibit "P", to Owner upon Substantial Completion; provided, however, that, notwithstanding such assignment, Contractor shall also be entitled to enforce each such representation,

warranty, guarantee, and obligation through the end of the applicable warranty periods as an express third-party beneficiary. Contractor shall deliver to Owner promptly following execution of such applicable contract with a Subcontractor and upon Owner's request duly executed copies (with pricing information redacted) of all contracts containing such representations, warranties, guarantees, and obligations.

18.1. Correction of Defects.

(a) Owner shall promptly give Notice to Contractor upon discovery of any failure of any of the Work to satisfy the Project Warranties or the Materials Warranty during the applicable Warranty Period (including Subcontractor warranty period). In the event of any such failure under circumstances in which there is an immediate need as defined in Section 18.8, then Owner shall perform such warranty work for Contractor's account in accordance with the Warranty Procedures; provided, however, that the failure to comply with such Warranty Procedures shall not void the Project Warranties or the Materials Warranty. In all other cases, Contractor shall, at its own cost and expense (except to the extent of insurance proceeds actually received), be responsible for re-performing any necessary engineering and purchasing relating to such Equipment, material, labor, and shipping, and removing any Defect and the cost of replacement thereof, including any resulting damage to surrounding Work and/or adjacent property, equipment and facilities, as shall be necessary to cause the Work and the Project to conform to the Project Warranties or Materials Warranty. Within five (5) days after receipt by Contractor of a Notice from Owner specifying a failure of any of the Work to satisfy Contractor's Project Warranties or the Materials Warranty and requesting Contractor to correct the Defect, Contractor and Owner shall mutually agree when and how Contractor shall remedy said Defect. If Contractor does not use commercially reasonable efforts to proceed to complete said remedy within the time agreed to, or should Contractor and Owner fail to reach such an agreement within such five (5) day period, Owner shall have the right to perform the necessary remedy, or have third parties perform the necessary remedy, in accordance with the Warranty Procedures; provided, however, that the failure to comply with such Warranty Procedures shall not void the Project Warranties or the Materials Warranty, and the costs as established pursuant to the Warranty Procedures shall be borne by Contractor.

(b) Notwithstanding the foregoing, Contractor shall have the right to request Owner to perform all or any portion of Contractor's obligations with respect to any warranty claim, and, if Owner determines that it has the capability and expertise to perform such obligations, Owner shall perform such obligations and all costs incurred thereby shall be for Contractor's account in accordance with the Warranty Procedures; provided, however, that the failure to comply with such Warranty Procedures shall not void the Project Warranties or the Materials Warranty.

18.8 Additional Warranty Procedures. Where Owner determines that an immediate need exists, Owner may undertake immediate corrective action, including contacting the applicable Vendor directly to seek assistance. An “immediate need” is a situation when there is: (a) a threat of imminent harm to persons or property; (b) a situation that in Owner’s reasonable determination could materially adversely impact the operation of the Project or the Transmission Grid; or (c) an electric line outage, generation project outage or customer outage that in Owner’s reasonable determination requires immediate action.

Where Owner does not take corrective action under this Section 18.8, Owner shall notify Contractor in accordance with Section 18.7 of the Contract and provide documents as provided below. Within two (2) days after receipt of said documents, Contractor and Owner shall confer with regard to the appropriate procedures to utilize in correcting the Defect and shall within a reasonable period thereafter (not to exceed thirty (30) days) mutually agree when and how Contractor shall remedy said Defect. If Contractor does not use its reasonable efforts to proceed to complete said remedy within the time agreed to, or should Contractor and Owner fail to reach such an agreement within such thirty (30) day period, Owner shall have the right to perform the necessary remedy, or have others perform the necessary remedy, in accordance with the Warranty Procedures; provided, however, that the failure to comply with such Warranty Procedures shall not void the Project Warranties or the Materials Warranty, and the costs reasonably incurred shall be borne by Contractor.

The following procedures (“Warranty Procedures”) shall be observed in all Contractor warranty claims for the Project in connection with which Owner has independently taken corrective action as set forth above with respect to an “immediate need”:

- (a) Owner shall promptly provide telephonic notice to Contractor’s designated warranty representative of any failure of the Work to satisfy either the Project Warranty or the Materials Warranty;
- (b) A failure report, which shall contain technical and logistical information sufficiently detailed to enable Contractor to assess the damage of the Work and to evaluate appropriate corrective action shall be provided by Owner within a reasonable period of time after the occurrence of any event giving rise to a warranty claim;
- (c) Warranty claims shall be submitted in accordance with paragraph (d) below, and shall include, as a required minimum, the following documents:
 - (i) Applicable failure report;
 - (ii) List of equipment and materials purchased or used in accomplishing the repair, schedule of operations, and subcontractors hours applicable

to each claim, and a copy of any internal work orders or purchase orders prepared in connection with each such claim;

(iii) Owner's maintenance and repair records with respect to the Equipment for which the claim is being made, including the manufacturer/vendor part number and serial number and the identification by part number and serial number of the next major assembly call out; and

(iv) Copies of invoices received or prepared for costs and expenses claimed.

(d) All warranty claims pertaining to failure of the Equipment for which Owner has independently undertaken corrective action pursuant to this Section 18.8 during any calendar month shall be submitted to Contractor on or before the last day of the following calendar month. Claims shall be paid by Contractor on a net 21 day basis. Work performed by Owner under a warranty claim shall be billed on a time and materials basis as further defined below in paragraph (d). Any warranty claim submitted by Owner that is not disputed by Contractor within ninety (90) days shall be deemed to have been accepted by Contractor.

(e) "Time and Material" in connection with a warranty claim is defined as follows:

(i) With respect to "Time," the product of 115% of the normal hourly wage (including fringe benefits, insurance and taxes) Owner pays with respect to its particular employee (not including overhead) multiplied times the number of hours each employee performed the particular work.

(ii) With respect to "Material," 115% of the actual purchase price paid by Owner or an Affiliate to a third party for the materials incorporated or consumed in connection with the Work; and

(iii) With respect to Work performed by a subcontractor (other than an entity which is an Affiliate of Owner, Work performed by any such entity being deemed Work performed by Owner through its own employees for purposes of this definition), 115% of the actual amount paid by Owner to the subcontractor for such Work.

(f) Owner shall maintain adequate records to support all warranty claims and allow Contractor access to such records upon not less than ten (10) days' notice.

19. EQUIPMENT IMPORTATION; TITLE

19.1 Importation of Equipment. Contractor, at its own cost and expense, shall make all arrangements, including the processing of all documentation, necessary to import into the United States Equipment to be incorporated into the Project and any other equipment and other items necessary to perform the Work and shall coordinate with the applicable Governmental Authorities in achieving clearance of United States customs for all such Equipment and other items and, to the extent available under United States law but without limiting Contractor's liability for any and all import duties, Taxes and levies as specified in Section 6.2 and Section 6.3, achieving such importation duty-free and tax-free. In no event shall Owner be responsible for any delays in customs clearance or any resulting delays in performance of the Work. Such delays in customs clearance shall not be considered an event of Force Majeure, unless such delay is itself caused by a Force Majeure event.

19.2 Title.

19.2.1 Contractor warrants good title, free and clear of all liens, claims, charges, security interests, and encumbrances whatsoever, to all Equipment and other items furnished by it or any of its Subcontractors that become part of the Project or that are to be used for the operation, maintenance, or repair thereof.

19.2.2 Title to all Equipment and other items shall pass to Owner, free and clear of all liens, claims, charges, security interests, and encumbrances whatsoever, upon the earlier of payment in full therefor or incorporation into the Project or delivery to the Site, a Contractor Yard Site, or any laydown area or storage area used primarily in connection with the Work.

19.2.3 The transfer of title shall in no way affect Owner's rights as set forth in any other provision of this Contract. Contractor shall have care, custody, and control of all Equipment and other items (including Equipment and other items imported into the United States) and exercise due care with respect thereto consistent with Section 24.1.

19.3 Protection. For the purpose of protecting Owner's interest in all Equipment and other items with respect to which title has passed to Owner pursuant to Section 19.2 but that remain in possession of another Person, Contractor shall take or cause to be taken all steps necessary under Applicable Laws to protect Owner's title and to protect Owner against claims by other Persons with respect thereto.

20. DEFAULT

20.1 Contractor Events of Default. Contractor shall be immediately in default of its obligations pursuant to this Contract upon the occurrence of any one or more events of default below (each, a “Contractor Event of Default”):

- (a) Contractor or Parent Guarantor becomes insolvent, generally does not pay its debts as they become due, admits in writing its inability to pay its debts, or makes an assignment for the benefit of creditors, or insolvency, receivership, reorganization, or bankruptcy proceedings are commenced by Contractor or Parent Guarantor (as applicable);
- (b) Insolvency, receivership, reorganization, or bankruptcy proceedings are commenced against Contractor or Parent Guarantor and such proceedings shall remain undismissed or unstayed for a period thirty (30) days;
- (c) Any representation or warranty made by Contractor herein was false or materially misleading when made and Contractor fails to remedy such false or misleading representation or warranty, and to make Owner whole for any consequences thereof, within thirty (30) days after Contractor receives a Notice from Owner with respect thereto;
- (d) Contractor assigns or transfers (or attempts to so assign or transfer) this Contract or any right or interest herein, except as expressly permitted under Article 30;
- (e) Contractor fails to maintain any insurance coverages required of it in accordance with Article 23;
- (f) Contractor fails to perform or observe in any respect any provision of this Contract providing for the payment of an undisputed amount of money to Owner and such failure continues for ten (10) days after Contractor receives Notice from Owner with respect thereto;
- (g) Following approval of a Schedule Recovery Plan pursuant to Section 8.3, Contractor’s unexcused failure to meet the schedule set forth in the Schedule Recovery Plan (as determined from the revised Critical Path Method Schedule established by the Schedule Recovery Plan);
- (h) Contractor is otherwise in breach of any material provision of this Contract, or has otherwise failed in a material respect to perform its obligations under this Contract (not otherwise addressed in this Section 20.1) and such breach or failure continues for thirty (30) days after Contractor receives Notice from Owner; provided, however, that if in Owner’s determination such default or

failure is not capable of cure within a thirty (30) day period and within a fifteen (15) day period after receipt of such Notice from Owner and Contractor commences and diligently proceeds to cure such default or failure, then such default or failure shall not constitute a Contractor Event of Default unless it remains uncured ninety (90) days from the date of the original Notice from Owner;

- (i) The Substantial Completion Date with respect to the Project has not occurred on or before a date that is sixty (30) days after the Substantial Completion Guaranteed Date; or the Final Completion Date has not occurred on or before a date that is sixty (30) days after the Final Completion Guaranteed Date; or
- (j) Contractor has incurred the Maximum Aggregate Liquidated Damages; or
- (k) Contractor suspends or abandons the Work. “Suspend” for the purposes of this Section 20.1(k) means that Contractor has not accomplished any progress toward any of the Critical Path Items for a period of thirty (30) or more days and such suspension is not otherwise permitted under this Contract. “Abandon” for the purposes of this Section 20.1(k) means that Contractor has substantially reduced personnel at the Site or removed further required equipment from the Site such that, in the opinion of an experienced construction manager, Contractor would not be capable of maintaining progress in accordance with the Critical Path Method Schedule.

20.2 Owner’s Rights and Remedies. In the event of a Contractor Event of Default, Owner or its assignees shall have the following rights and remedies, in addition to any other rights and remedies that may be available to Owner or its assignees under this Contract and Applicable Laws, and Contractor shall have the following obligations:

- (a) Owner may, without prejudice to any of its other rights or remedies, terminate this Contract;
- (b) Owner may, without prejudice to any of its other rights or remedies, seek performance by any guarantor of Contractor’s obligations hereunder or draw upon any applicable Letter of Credit provided in accordance with this Contract;
- (c) If requested by Owner, Contractor shall withdraw from the Site, shall assign to Owner such of Contractor’s subcontracts and purchase orders that are not subject to Contractor’s assignment under Section 10.3 and to the extent assignable, and Contractor Acquired Permits as Owner may request. If requested by Owner, Contractor shall deliver and make available to Owner all information, documents, patents, and licenses of Contractor related to the Work reasonably necessary to permit Owner to complete or cause the completion of the Work, and in connection therewith Contractor authorizes

Owner and its agents to use such information in completing the Work. If requested by Owner, Contractor shall remove such materials, equipment, tools, and instruments used by and any debris or waste materials generated by Contractor in the performance of the Work as Owner may direct, and Owner may take possession of any or all Drawings and Specifications, Required Manuals, and Site facilities, related to the Work and necessary for completion of the Work (whether or not such Drawings and Specifications, Required Manuals, and Site facilities are complete);

- (d) Owner shall have the right (either with or without the use of Contractor's equipment) to have the Work finished whether by enforcing any security given by or for the benefit of Contractor for its performance under this Contract or otherwise, in which case Owner shall have the right to take possession of and use all construction equipment of Contractor necessary for completion of the Work, and Contractor shall have no right to remove such items from the Site until such completion; provided, however, Owner shall be responsible for any loss or damage incurred (normal wear and tear excluded) as a result of such use;
- (e) Owner may seek equitable relief to cause Contractor to take action or to refrain from taking action pursuant to this Contract or to make restitution of amounts improperly received under this Contract; or
- (f) Owner may seek damages as provided in Section 20.3, including proceeding against any bond, guarantee, Letter of Credit, or other security given by or for the benefit of Contractor for its performance under this Contract.

20.3 Damages for Contractor Default.

- (a) In the event of a Contractor Event of Default, but in such case subject to the limitations of Article 35, Contractor shall be liable to Owner for any and all actual damages (and also the damages payable in accordance with subparagraph (b) below) to Owner as a result of such Contractor Event of Default, it being understood that, to the extent that the actual costs of completing the Work, including compensation for obtaining a replacement contractor or for obtaining additional professional services required as a consequence of Contractor's Event of Default, exceed those costs that would have been payable to Contractor but for Contractor's Event of Default, Contractor shall be obligated to pay the difference to Owner. In addition, in the event of a Contractor Event of Default, Owner shall be entitled to withhold further payments to Contractor for the Work performed prior to termination of this Contract until Owner determines the liability of Contractor, if any, under this Section 20.3. Upon determination of the total cost of the Work, Owner shall give Notice to Contractor of the amount, if any, that Contractor shall pay Owner or Owner shall pay Contractor. Such

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Both Parties have caused an individual with the requisite authority to acknowledge this and each page of this Contract prior to execution.

Contractor: Initial _____

Company: Initial _____

payment hereunder shall be made within twenty-one (21) days after receipt of such Notice accompanied by reasonably satisfactory documentation substantiating the amounts payable.

- (b) In addition, if, in the event of a Contractor Event of Default set forth in clauses (g), (i) or (k) of Section 20.1, Owner elects to terminate this Contract pursuant to Section 20.2(a) above, then Contractor shall immediately pay to Owner the Maximum Aggregate Liquidated Damages as liquidated damages for such Contractor Event of Default and for Contractor's failure to proceed with or make adequate progress towards the completion of the Work as required by this Contract. Owner and Contractor agree that Owner's actual damages in the event of any Contractor Event of Default set forth in clauses (g), (i) or (k) of Section 20.1 would be extremely difficult or impracticable to determine and that, after negotiation, Owner and Contractor have agreed that the Delay Liquidated Damages and/or Maximum Aggregate Liquidated Damages required to be paid hereunder are a reasonable estimate of the damages that Owner would incur as a result of such a Contractor Event of Default.
- (c) If it is determined for any reason that Contractor was not in default or that its default was excusable or that Owner was not entitled to the remedy against Contractor provided above, the termination will be deemed to be a termination for convenience/early termination pursuant to Article 21.

20.4 Owner Event of Default. Owner shall be in default of its obligations pursuant to this Contract in the event Owner fails to perform or observe in any respect any provision of this Contract providing for the payment of an undisputed amount of money to Contractor, and such failure continues for ten (10) Business Days after Owner receives a Notice from Contractor with respect thereto ("Owner Event of Default").

20.5 Contractor's Remedies. In the event of an Owner Event of Default, and subject to Article 35, Contractor shall have all rights and remedies that may be available under Applicable Laws against Owner with respect to this Contract, including the right to suspend performance of the Work or to terminate this Contract (and including the right to immediately stop work upon an Owner Event Of Default for non-payment).

21. EARLY TERMINATION

21.1 General. Owner may in its sole discretion terminate all or part of the Work with or without cause at any time by giving Notice of termination to Contractor, to be effective upon the receipt of such Notice by Contractor or upon such other termination date specifically identified by Owner therein. If Owner terminates the Work without cause or for any cause other than a Contractor Event of Default specified in Section 20.1 or if the circumstances described in the last paragraph of Section 20.3 apply, then Contractor shall

receive as compensation for the Work performed through the effective date of termination:

- (a) The sum, without duplication, of: (i) the aggregate amount set forth on the Project Payment Schedule for completion of items of Work that have been properly completed by Contractor, in accordance with this Contract; (ii) for each item of Work properly commenced but not yet completed by Contractor in accordance with this Contract, a percentage of the aggregate amount set forth on the Progress Payment Schedule for completion of such item based on the percentage of completion of such item; and (iii) reasonable demobilization costs; provided, however that the sum shall not exceed the amount set forth on the Cancellation Schedule corresponding to the month in which such termination occurs; minus
- (b) Any amounts previously paid to Contractor under this Contract, in respect of the Contract Price.

21.1.1 Adjustment for Defects. Notwithstanding the foregoing, the amount owed pursuant to Section 21.1 shall be subject to adjustment to the extent any Work contains Defects or to the extent of any overpayments by Owner and provided, further, that Contractor shall use its reasonable efforts to minimize costs that arise between the date of its receipt of a Notice of termination and the effective date thereof, including by promptly notifying its Subcontractors of such termination.

21.1.2 Assumption of Contractor Contracts. Owner shall have the right, at its sole option, to assume and become liable for any reasonable obligations that Contractor may have in good faith incurred for its Site personnel and for any reasonable written obligations and commitments that Contractor may have in good faith undertaken with third parties in connection with the Work to be performed at the Site, which obligations and commitments shall not have been covered by the payments made to Contractor under Section 21.1. If Owner elects to assume any obligation of Contractor as described in this Section 21.1.2, then, as a condition precedent to Owner's compliance with any subsection of this Article 21, Contractor shall execute all papers and take all other reasonable steps requested by Owner which may be required to vest in Owner all rights, set-offs, benefits and titles necessary to such assumption by Owner of such obligations described in this Article 21. Owner shall simultaneously provide to Contractor indemnities against liabilities thereafter arising under the assumed obligations or commitments.

21.2 Claims for Payment. All claims for payment by Contractor under this Article 21 must be made within forty-five (45) days after the effective date of a termination hereunder. Owner shall make payments under this Article 21 in accordance with Article 7.

21.3 Termination Payments. The payments described in Section 21.1 include payment for all costs of Equipment, temporary equipment, materials, labor, transportation, engineering, design and other services relating to Contractor's performance of its obligations under this Contract (including any intellectual property rights licensed under this Contract, expressly or by implication) provided by Contractor. In addition to the payments described in Section 21.1, Owner shall pay Contractor for: (a) all Taxes on the Work (but not taxes based on Contractor's income or revenues); and (b) all other duties, levies, imposts, fees, or charges of any kind (whether in the United States or elsewhere) arising out of Contractor's or any such Subcontractor's performance of the Work, and (iii) any duties, levies, imposts, fees, charges, and royalties imposed on Contractor or its Subcontractors with respect to any such Equipment, materials, labor, or services provided under this Contract. Except as otherwise provided in Section 6.3, the above-described payments shall not be increased with respect to any of the foregoing or with respect to any withholdings in respect of any of the foregoing items that Owner may be required to make.

22. SUSPENSION

22.1 General. If at any time Owner, in its sole discretion, elects to suspend performance of the Work, Owner may suspend performance of the Work by giving Notice to Contractor. Such suspension shall commence and continue for the period specified in the suspension Notice. The Contract Price shall be adjusted as provided in clauses (a), (b), (c) and (d) of Section 22.2 to reflect any additional increased costs of Contractor resulting from any such suspension, as demonstrated by Contractor to Owner's reasonable satisfaction. No adjustment shall be made to the extent that performance is suspended, delayed, or interrupted for any cause due to Contractor's negligence, willful misconduct, or noncompliance with the terms of this Contract. At any time after the effective date of the suspension, Owner may require Contractor to commence to resume performance of the Work upon five (5) Business Days' Notice.

22.2 Contractor's Termination and Compensation Rights If, at the end of the specified suspension period, Owner has not requested a resumption of the Work or has not notified Contractor of any extension of the suspension period (but in no event beyond three hundred sixty-five (365) days in the aggregate for all such suspensions, other than suspensions for any reason due to Contractor's negligence, willful misconduct, or noncompliance with the terms of this Contract) Contractor may terminate this Contract. Owner shall promptly pay Contractor for the Work performed pursuant to Section 21.1. In addition, in the event of any such suspension, Owner shall pay Contractor within thirty (30) days after receipt of Contractor's Invoice for those reasonable costs incurred during the suspension period that are documented by Contractor to the reasonable satisfaction of Owner, to the extent attributable to the suspension, and that are:

- (a) For the purpose of safeguarding and/or storing the Work and the materials and Equipment at the point of fabrication, in transit, or at the Site;

- (b) For personnel, Subcontractors or rented equipment, the payments for which, with Owner's prior written concurrence, are continued during the suspension period;
- (c) For costs of demobilization and remobilization as approved by Owner; or
- (d) For rescheduling the Work (including penalties or additional payments to Subcontractors for the same).

22.3 Extension of Time. In the event of any suspension under this Article 22, other than from a cause due to Contractor's negligence, willful misconduct, or noncompliance with the terms of this Contract, the Project Guaranteed Dates shall be extended by a period equal to the suspension period, plus a reasonable period for demobilization and remobilization approved by Owner, and, provided that the Owner was notified of and approved suspension of long lead time Equipment orders, for any delays due to such suspension of long lead time Equipment for which the procurement schedule has been adversely affected, and the Critical Path Method Schedule and the Progress Payment Schedule shall be adjusted to account for same.

22.4 Claims for Payment. All claims by Contractor for compensation or extension of time under this Article 22 must be made within sixty (60) days after the suspension period has ended and the Work has been either terminated or resumed. Failure of Contractor to make such claim within said period shall be deemed a waiver by Contractor of any such claims.

23. INSURANCE

23.1. General.

23.1.1 Contractor's Insurance. Contractor, at its own expense, shall procure or cause to be procured and maintain or cause to be maintained in full force and effect at all times, commencing no later than upon commencement of the Work at the Site and until expiration of the Warranty Periods, all insurance coverages specified in Exhibit "Q-1" (except that the ocean marine cargo coverage and, to the extent applicable, construction all risk insurance coverage need only be maintained in full force and effect until the Substantial Completion Date). All insurance coverage shall be in accordance with the terms of this Article 23 and Exhibit "Q-1" and Exhibit "Q-3" using companies, to the extent required by Applicable Laws, authorized to do business in the states where the work specified in each Release is to be performed.

23.1.2 Owner's Insurance. Owner, at its own expense, shall procure or cause to be procured and maintain or cause to be maintained in full force and effect at all times, commencing no later than upon commencement of the Work at the Site and until the Substantial Completion, all insurance coverages specified in Exhibit "Q-

2” (except that, to the extent applicable, construction all risk insurance coverage need only be maintained in full force and effect until the Substantial Completion Date). All insurance coverages shall be in accordance with this Article 23 and Exhibit “Q-2” and Exhibit “Q-3” using companies, to the extent required by Applicable Laws, authorized to do business in the states where the work specified in each Release is to be performed.

23.1.3 Non-Violation. Contractor shall not violate nor permit to be violated any conditions of the policies provided by Owner under the terms of this Contract and shall at all times satisfy the requirements of the insurance companies issuing them. All requirements imposed by such policies and to be performed by Contractor shall likewise be imposed upon and assumed by each Subcontractor.

23.2 Subrogation Waivers. All policies (except Professional Liability and Aircraft Liability) shall provide for a waiver of subrogation rights against Owner, Owner’s Affiliates, Contractor, and their respective assigns, subsidiaries, Affiliates, directors, officers, employees, insurers, and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such Person insured under any such policy. Builders all risk insurance will not waive subrogation rights against manufacturers, suppliers, Subcontractors or Vendors for loss or damage caused by faulty design or workmanship in manufacturing of Equipment. Contractor releases, assigns, and waives any and all rights of recovery against the Owner, and Owner’s Affiliates, subsidiaries, employees, successors, permitted assigns, insurers, and underwriters that Contractor may otherwise have or acquire in or from or in any way connected with any loss covered by policies of insurance maintained or required to be maintained by Contractor pursuant to this Contract or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

23.3 Evidence of Insurance. Evidence of insurance required hereunder, in the form required to be delivered by a Party, but in any event in the form of certificates of insurance certified by such Party’s insurance brokers, shall be furnished by each Party when required to be delivered no later than the date on which coverage is required to be in effect pursuant to Exhibit “Q-1”, Exhibit “Q-2” and Exhibit “Q-3” as applicable. If applicable, a copy of the “Builders All Risk” insurance policy required to be provided in accordance with Exhibit “Q-1” shall be provided to the Owner for its review and approval (which approval shall not be unreasonably withheld) prior to any construction-related Work being performed at the Site or the delivery of any Equipment to the Site. If requested by Owner, copies of the other insurance policies shall be promptly provided by Contractor to Owner after the coverage date, excluding any premium information. Contractor’s automobile liability, commercial general liability and excess liability policies shall provide a severability of interests or cross-liability clause applying to such liability policies; provided, however, that the insurance shall be primary and not excess to or contributing with any insurance or self-insurance maintained by Owner and contain a provision that the policies may not be canceled or changed except: (a) as provided in

Exhibit "Q-1", Exhibit "Q-2" and Exhibit "Q-3" as applicable; or (b) if not therein provided, without thirty (30) days' or, in the case of nonpayment of premium, ten (10) days' prior written Notice given by certified mail to Owner and Contractor. Not later than the one-year anniversary of the date of delivery of the policies of insurance hereunder or the expiration date of the policy if for a term of more than one year, and not later than each one-year anniversary or policy renewal date thereafter, each Party shall deliver copies of the renewal insurance certificates as aforesaid.

23.4 Insurance Coverages. All amounts of insurance coverage under this Contract specified in Exhibit "Q-1", Exhibit "Q-2" and Exhibit "Q-3" are required minimums. Owner and Contractor shall each be solely responsible for determining the appropriate amount of insurance, if any, in excess thereof. The required minimum amounts of insurance shall not operate as limits on recoveries available under this Contract.

23.5 Failure to Maintain Insurance. If at any time the insurance to be provided by Owner or Contractor hereunder shall be reduced or cease to be maintained, then (without limiting the rights of the other Party hereunder in respect of any default that arises as a result of such failure) the other Party may at its option maintain the insurance required hereby, and, in such event: (a) Owner may withhold the cost of insurance premiums expended for such replacement insurance from any payments to Contractor; or (b) Owner shall reimburse Contractor for the premium of any such replacement insurance, as applicable.

23.6 Scope of Coverage. Contractor shall require such automobile liability, commercial general liability, excess liability insurance and workers' compensation/employer's liability insurance of Subcontractors who perform services at the Site as shall be reasonable and in accordance with Industry Standards in relation to the Work or other items being provided by each such Subcontractor. Each Subcontractor shall provide evidence of its insurance to Owner prior to performing any Work at the Site.

24. RISK OF LOSS OR DAMAGE

24.1 Contractor Assumption of Risk. From the Full Notice to Proceed Date until the Substantial Completion Date, Contractor assumes risk of loss and full responsibility for the cost of replacing or repairing the damage to the Project (including any insurance deductible and any uninsured losses) and all materials, Equipment, supplies and maintenance equipment (including temporary materials, equipment and supplies) which are purchased by Contractor or Owner for permanent installation in or for use during construction of the Project regardless of whether Owner has title thereto under this Contract, unless such loss or damage is a result of the negligence or intentional misconduct of Owner or Owner's agents during such time as such agents are acting under Owner's control, in which case Owner shall be responsible for the amount of any deductible amounts under applicable policies as identified in Exhibit "Q-1". Owner shall bear the risk of loss and be responsible for any damage with respect to the Project after the Substantial Completion Date or Owner's existing structures, materials or equipment

adjacent to or on the Site, except in the event and to the extent such loss or damage is a result of: (a) the continuing performance of the Work by the Contractor (including any Subcontractor); (b) the negligence or intentional misconduct of Contractor or any Subcontractor (including any of their employees or agents); or (c) a defect or other failure covered under any warranty set forth herein or any other act, omission or event for which Contractor is legally liable to Company under contract, law, or equity.

24.2 Loss or Damage; Limitations. If any portion of the Work is lost or damaged during the period when Contractor has the risk of loss in accordance with Section 24.1, then Contractor shall replace or repair any such loss or damage and complete the Work in accordance with this Contract. Notwithstanding the foregoing, to the extent that Owner has maintained construction all risk insurance for the Project, Contractor shall not be obligated to replace or repair any such loss or damage unless: (a) Owner has properly carried and maintained such insurance pursuant to Article 23 and Contractor has received reasonable assurances from Owner that Owner will prosecute such claim in a commercially reasonable manner and Contractor will receive the insurance proceeds, if any, paid under such Owner maintained insurance coverages in accordance with the disbursement provisions of this Contract; or (b) Owner agrees to pay for such replacement or repair as requested by Owner in accordance with Section 17.2. Should a loss be sustained under a third party liability policy, Contractor shall assume all responsibilities of an insured under the terms of said insurance.

25. INDEMNIFICATION

25.1 By Owner. Except for matters expressly made Contractor's responsibility hereunder or otherwise expressly limited as set forth in this Contract, Owner shall defend, indemnify, and hold harmless Contractor and its Subcontractors, and all their respective employees, Affiliates, agents, officers, partners and directors from and against all third party claims, or Losses for bodily injury or property damage that arise out of or result from the sole negligence of Owner.

25.2 By Contractor. Except for matters expressly made Owner's responsibility hereunder and in addition to any other indemnification obligations of Contractor under this Contract, Contractor shall defend, indemnify, and hold harmless Owner and any Person acting for or on behalf of Owner and their respective employees, agents, partners, Affiliates, shareholders, directors, officers, and permitted assigns, from and against all Losses that directly or indirectly:

- (a) Arise out of or result from the prosecution of the Work by Contractor (including its Subcontractors) that arise out of or result from any acts or omissions (including strict liability) of Contractor, its agents, servants, employees or by the agents, servants or employees of any Subcontractors;

- (b) Arise out of or result from the failure of Contractor or Subcontractors to comply with Applicable Laws or the conditions or provisions of Applicable Permits;
- (c) Arise out of any insurance policy procured under Article 23 being vitiated as a result of Contractor's failure to comply with any of the requirements set forth in such policy or any other act by Contractor or any Subcontractor;
- (d) Arise out of or result from Contractor's failure to comply with its obligations under this Contract with respect to Hazardous Materials; or
- (e) Arise from any other breach by Contractor of its representations, warranties and obligations (including any other indemnification provision) under this Contract.

25.3 Actions by Government Authorities. Contractor shall defend, indemnify, and hold Owner and their respective employees, agents, partners, Affiliates, shareholders, directors, officers, and assigns harmless from and against all claims by any Governmental Authority claiming Taxes or other obligations that are Contractor's responsibility pursuant to Section 6.2 and Section 6.3, including Taxes based on gross receipts or income of Contractor, any of its Subcontractors, or any of their respective agents or employees with respect to any payment for the Work made to or earned by Contractor, any of its Subcontractors, or any of their respective agents or employees under this Contract.

25.4 Notice; Defense; Settlement. An indemnitee under this Article 25 or any other indemnification provision set forth in the Contract shall, within ten (10) Business Days after the receipt of written notice of the commencement of any legal action or of any claims against such indemnitee in respect of which indemnification will be sought, notify the indemnitor with a written notice thereof. Failure of the indemnitee to give such written notice will reduce the liability of the indemnitor by the amount of damages attributable to the failure of the indemnitee to give such written notice to the indemnitor, but the failure so to notify shall not relieve the indemnitor from any liability that it may have to such indemnitee otherwise than under the indemnity agreements contained in this Article 25. In case any such claim or legal action shall be made or brought against an indemnitee and such indemnitee shall notify the indemnitor thereof, the indemnitor may, or if so requested by such indemnitee shall, assume the defense thereof, without any reservation of rights. After written notice from the indemnitor to such indemnitee of an election to assume the defense thereof and approval by the indemnitee of counsel selected by the indemnitor, the indemnitor will not be liable to such indemnitee under this Article 25 for any legal fees or expenses subsequently incurred by such indemnitee in connection with the defense thereof so long as the indemnitor continues to provide such defense. No indemnitee shall settle any indemnified claim over which the indemnitor has not been afforded the opportunity to assume the defense without the indemnitor's written approval.

The indemnitor shall control the settlement of all claims over which it has assumed the defense; provided, however, that the indemnitor shall not conclude any settlement that requires any action or forbearance from action by the indemnitee or any of its Affiliates without the prior written approval of the indemnitee. The indemnitee shall provide reasonable assistance to the indemnitor, at the indemnitor's expense, in connection with such legal action or claim. If the indemnitor assumes the defense of any such claim or legal action, any indemnitee shall have the right to employ separate counsel in such claim or legal action and participate therein, and the reasonable fees and expenses of such counsel shall be at the expense of such indemnitee, except that such fees and expenses shall be for the account of the indemnitor if: (a) the employment of such counsel has been specifically authorized by the indemnitor; or (b) the named parties to such action (including any impleaded parties) include both such indemnitee and the indemnitor and representation of such indemnitee and the indemnitor by the same counsel would, in the reasonable opinion of the indemnitee, be inappropriate under applicable standards of professional conduct due to actual or potential conflicting interests between them. Notwithstanding anything to the contrary in this Section 25.4, the indemnitee shall have the right, at its expense, to retain counsel to monitor and consult with indemnitor's counsel in connection with any such legal action or claim.

26. PATENT INFRINGEMENT AND OTHER INDEMNIFICATION RIGHTS

26.1 Indemnity by Contractor. Contractor shall defend, indemnify, and hold harmless Owner and its employees, partners, directors, officers and assigns against all Losses arising from any claim or legal action for unauthorized disclosure or use of any trade secrets, or of patent, copyright, or trademark infringement arising from Contractor's performance (or that of its Affiliates or Subcontractors) under this Contract or otherwise asserted against Owner that either: (a) concerns any Equipment, materials, supplies, or other items provided by Contractor, any of its Affiliates, or any Subcontractor under this Contract; (b) is based upon or arises out of the performance of the Work by Contractor, any of its Affiliates, or any Subcontractor, including the use of any tools or other implements of construction by Contractor, any of its Affiliates, or any Subcontractor; (c) is based upon or arises out of the design or construction of any item by Contractor under this Contract or the operation of any item according to directions embodied in Contractor's final process design, or any revision thereof, prepared or approved by Contractor; or (d) affects the Owner's ability to operate the Project.

26.2 Lawsuits. If such claim or legal action for such infringement results in a suit against Owner the provisions of Section 25.4 shall apply.

26.3 Injunction. If Owner is enjoined from completion of the Project or any part thereof, or from the use, operation, or enjoyment of the Project or any part thereof, as a result of such claim or legal action or any litigation based thereon, Contractor shall promptly use its best efforts to have such injunction removed at no cost to Owner. If any such claim, suit or proceeding, the Project or any part, combination or process thereof is alleged to or is held to constitute an infringement and its use is permanently enjoined,

Contractor shall at its own expense and without impairing performance requirements, (1) procure for Owner the right to use the infringing Work, (2) if (1) is not commercially feasible, modify the infringing Work or part, combination or process thereof so they become non-infringing, or (3) if (1) and (2) are not commercially feasible, replace the infringing Work or part, combination or process thereof with non-infringing components or parts, provided such modification or replacement shall not diminish or alter the features of or the functionality of the Work.

26.4 Effect of Owner's Actions. Owner's acceptance of the Contractor Deliverables or proposed or supplied materials and Equipment shall not be construed to relieve Contractor of any obligation hereunder.

27. CONFIDENTIAL INFORMATION; TITLE TO INTELLECTUAL PROPERTY

27.1. Confidential Information.

27.1.1 Any Confidential Information is disclosed in confidence, and the transferee shall restrict its use of such information solely to uses related to the Project or performance of this Contract. Neither the transferee nor any consultant or other Person to whom any confidential or proprietary information is provided in connection with the Project or performance of this Contract shall publish or otherwise disclose such information to others or use such information for any purpose except as expressly provided above without the written approval of the transferor; provided, however, that nothing herein shall limit: (a) the right of Owner to provide any information regarding Contractor, any Subcontractor, this Contract, or the Work to any financing entity (or advisors retained on their behalf) or their successors and assigns or to any potential or actual successor in interest or to a purchaser of a Party's assets to which this Contract relates (provided, however, that such disclosures shall be subject to the agreement of such Persons to keep such information confidential pursuant to the terms of this Section 27.1); (b) the right of either Party to supply such information to any Governmental Authority asserting a right to such information, or as may be required by Applicable Laws; or (c) the right of Owner to disclose, reproduce and/or use as many copies of any information or documents provided to Owner as Owner in its sole discretion considers useful or necessary for the furtherance of the Work or in connection with the operation, maintenance or repair of the Project, regardless of any notices, legends, or disclaimers on such information or documents.

BES Cyber System Information. Confidential Information of Owner labeled as BCSI shall be protected consistent with the following requirements: (a) BCSI shall be protected at all times, either by appropriate storage or having it under the personal observation and control of a person authorized to receive it; (b) each person who works with protected BCSI is personally responsible for taking proper precautions to ensure that unauthorized persons do not gain access to it; (c) reasonable steps shall be taken to minimize the risks of access to BCSI by

unauthorized personnel (when not in use, BCSI shall be secured in a secure container, such as a locked desk, file cabinet or facility where security is provided); (d) documents or material containing BCSI may be reproduced to the minimum extent necessary, consistent with the need to carry out the Work, provided that the reproduced material is marked and protected in the same manner as the original material; (e) material containing BCSI should be disposed of through secured shredding receptacles or other secured document destruction methods; (f) BCSI shall be transmitted only by the following means: (i) hand delivery; (ii) United States first class, express, certified or registered mail, bonded courier, or through secure electronic means; (iii) e-mail with encrypted file (such as, WinZip with password) (the password should not be included in e-mail, but should be delivered by phone or in an unrelated e-mail not mentioning the document name; password-protected Microsoft Office documents do not meet the encryption requirements); and (g) documents or material containing BCSI shall be returned to Owner or certified destroyed upon completion of the Work.

27.1.2 Notwithstanding the designation of any information as proprietary by a transferor, such information shall not be deemed proprietary or confidential if it: (a) was furnished by such Party prior to the execution of this Contract without restrictions; (b) becomes knowledge available within the public domain; (c) is received by either Party from a third party without restriction and without breach of this Contract; or (d) is or becomes generally available to, or is independently known to or has been or is developed by, either Party or any of its Affiliates other than solely as a result of any disclosure of proprietary information by the transferor to the transferee.

Title to the Confidential Information shall remain with the owner of such Confidential Information.

27.2 Title to Contractor Deliverables. All Contractor Deliverables and other documents to be furnished to Owner by Contractor or by any Subcontractor or Vendor and all modifications made by Contractor to any documents obtained, developed or created exclusively for the Project by or for Contractor shall be the property of Owner. Notwithstanding the foregoing, to the extent Contractor furnishes standard Equipment manuals or similar materials not created specifically in connection with the Work, Owner shall obtain ownership only of the copies actually furnished and shall not hold the copyright thereto. Contractor shall retain the ownership of intellectual property rights in its standard drawing details, designs, specifications, databases, computer software and any other proprietary property.

28. INVENTIONS AND LICENSES

Contractor agrees to grant and hereby grants to Owner an irrevocable, non-exclusive, royalty-free license with respect to all Confidential Information, patents and other proprietary information of Contractor or any Subcontractor related to the Work now or

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Both Parties have caused an individual with the requisite authority to acknowledge this and each page of this Contract prior to execution.

Contractor: Initial _____

Company: Initial _____

hereafter owned or controlled by Contractor or a Subcontractor to the extent reasonably necessary for the operation, maintenance, repair, or alteration of the Project or any subsystem or component thereof designed, specified, or constructed by Contractor under this Contract or in connection with any of Owner's electric transmission operations. No other license in such Confidential Information, patents and proprietary information is granted pursuant to this Contract.

29. ASSIGNMENT BY OWNER

Without the prior consent of Contractor, Owner may, upon Notice to Contractor, assign all or part of its right, title, and interest in this Contract and/or the Work to any Affiliate. In addition, without the prior consent of Contractor, Owner may, upon Notice to Contractor, assign all or part of its right, title, and interest in this Contract and/or Work to any Person that acquires the part of the Transmission Grid to which the Project is a part, whether by sale, merger or other means of transfer. Owner may assign all or part of its right, title, and interest in this Contract to any other Person with the prior written approval of Contractor, which approval shall not be unreasonably withheld or delayed; and upon such assignment the Owner shall be relieved of all of its obligations hereunder.

30. ASSIGNMENT BY CONTRACTOR

Contractor understands that this Contract is personal to Contractor. Contractor shall have no right, power, or authority to assign or delegate this Contract or any portion thereof, either voluntarily or involuntarily, or by operation of law. Contractor's attempted assignment or delegation of any of its work hereunder shall be null and void and shall be ineffective to relieve Contractor of its responsibility for the Work assigned or delegated.

31. INDEPENDENT CONTRACTOR

31.1 General. Contractor is an independent contractor, and nothing contained herein shall be construed as constituting any relationship with Owner other than that of owner and independent contractor, or as creating any relationship whatsoever between Owner and Contractor's employees. Neither Contractor nor any of its employees is or shall be deemed to be an employee of Owner.

31.2 Employees. Subject to Section 4.5, Section 4.16 and Section 10.1, Contractor has sole authority and responsibility to employ, discharge, and otherwise control its employees and Subcontractors.

32. NON-PAYMENT CLAIMS

Contractor shall provide Owner, upon Owner's request, copies of any preliminary notices filed with Governmental Authorities and any other similar notices received from any of its Subcontractors related to Work or the Project. If requested by Owner, Contractor shall

promptly file a “notice of completion” or similar document with the appropriate Governmental Authority as allowed by Applicable Law.

Contractor shall indemnify and hold harmless Owner and Affiliates (collectively, the “Lien Indemnitees”) and defend each of them from and against any and all Losses arising out of any and all claims for payment, whether or not reduced to a lien or mechanic’s lien, filed by Contractor (except as permitted pursuant to the final sentence of this Article 32) or any Subcontractor, or other Persons performing any portion of the Work, including reasonable attorneys’ fees and expenses incurred by any Lien Indemnatee in discharging any such liens or similar encumbrances. If Contractor shall fail to discharge, bond around or otherwise dispatch in a manner reasonably satisfactory to Owner promptly any such lien or claim filed against the Project or any interest therein, upon any materials, Equipment, or structures encompassed therein, or upon the Site and/or premises upon which they are located, any Lien Indemnatee may so notify Contractor in writing, and Contractor shall then: (a) satisfy all such liens and claims; or (b) defend Lien Indemnitees against all such liens or claims and provide assurances of payment as described in the second to last sentence of this Article 32. If Contractor does not promptly satisfy such liens or claims, give such Lien Indemnatee reasons in writing that are satisfactory to such Lien Indemnatee for not causing the release of such liens or paying such claims, or contest such liens or claims in accordance with the provisions of the second to last sentence of this Article 32, any Lien Indemnatee shall have the right, at its option, after written notification to Contractor, to cause the release of, pay, or settle such liens or claims, and Owner at its sole option may (i) require Contractor to pay, within five (5) days after request by Owner; or (ii) offset against any retainage or other amounts due or to become due to Contractor (in which case Owner shall, if it is not the applicable Lien Indemnatee, pay such amounts directly to the Lien Indemnatee causing the release, payment, or settlement of such liens or claims) all costs and expenses incurred by the Lien Indemnatee in causing the release of, paying, or settling such liens or claims, including administrative costs, attorneys’ fees, and other expenses. Contractor shall have the right to contest any such lien, provided it first provides to Owner a bond or other assurances of payment reasonably satisfactory to Owner in the amount of such lien and in form and substance reasonably satisfactory to Owner. Notwithstanding any provision of this Contract to the contrary, nothing herein shall affect Contractor’s right to file or otherwise place a lien on the Project, Site, and/or Work (including a mechanic’s lien) as a result of the non-payment by Owner of any undisputed amount owed to Contractor hereunder.

33. NOTICES AND COMMUNICATIONS

33.1 Requirements. Any Notice pursuant to the terms and conditions of this Contract shall be in writing and: (a) delivered personally, (b) sent by certified mail, return receipt requested, or (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, to the following addresses:

If to Contractor: Telephone:
Attention:

With a copy to:

Attention:
Telephone:

If to Owner:

With a copy to:

33.2 Effective Time. Notices shall be effective when received by the other Party.

33.3 Representatives. Any technical or other communications pertaining to the Work shall be with the Parties' designated representative. Each Party shall give Notice to the other of the names of such representatives. The Project Manager and the Project Representative shall each have knowledge of the Work and be available at all reasonable times for consultation. Each Party's representative shall be authorized on behalf of such Party to administer this Contract, agree upon procedures for coordinating the efforts of Owner and Contractor, and, when appropriate, to furnish information to or receive information from the other Party in matters concerning the Work.

34. INTENTIONALLY OMITTED

35. LIMITATIONS OF LIABILITY AND REMEDIES

35.1 Limitations on Damages. Except for the Delay Liquidated Damages payable under Article 16, and the Maximum Aggregate Liquidated Damages payable under Section 20.3, and each Party's respective indemnity obligations for third party Losses under Article 25, Article 26, and any other provision in this Contract imposing indemnification obligations, and notwithstanding anything else in this Contract to the contrary, neither Party nor its Affiliates shall be liable to the other for any indirect, punitive, consequential or special damages or lost profits, lost revenue or loss of use of the Project, or cost of purchase or replacement power, whether foreseen or not, arising from a failure to perform any obligation under this Contract, whether such liability arises in contract, tort

(including negligence or strict liability), statutory or otherwise. This Section 35.1 shall not be construed to limit recovery for any Losses under any indemnity in this Contract, included Article 25 and Article 26.

35.2 Parent Guaranty and Letter of Credit.

(a) Parent Guaranty. All of Contractor's obligations under this Contract shall be secured by the Parent Guaranty's. Contractor shall deliver the Parent Guaranty's (duly executed by the party thereto) to Owner contemporaneously with Contractor's execution of this Contract.

(b) Letters of Credit.

(1) Performance LOC. Contractor shall deliver such Performance LOC to Owner within five (5) days after the Effective date of each Release and such delivery shall be a condition precedent to Owner's further obligations hereunder. The Performance LOC shall terminate sixty (60) days after the Substantial Completion Date, provided Contractor has delivered to Owner a Warranty LOC in accordance with Section 35.2(b)(2).

(2) Warranty LOC. The Warranty LOC shall be provided to Owner on or prior to sixty (60) days after the Substantial Completion Date and Owner shall not be entitled to draw under such Warranty LOC unless and until the Performance LOC has been cancelled or terminated in accordance with subpart (1) above. The Warranty LOC shall be cancelled on the date 60 months after the Substantial Completion Date.

(3) General Terms. The Contractor shall maintain each of the Performance LOC, the Retainage LOC and the Warranty LOC in full force and effect at all times as required hereunder. If, at any time, any Letter of Credit ceases to satisfy the requirements set forth in this Contract, then the Contractor shall upon four (4) Business Days Notice from Owner deliver a replacement Letter of Credit that complies with the requirements of this Contract, unless Owner has drawn any portion or the entire amount of the Letter of Credit pursuant to Section 35.2(b).

(4) Draw Conditions. Owner shall be entitled to make a demand under a Letter of Credit one or more times in amount(s) not to exceed the stated value of the Letter of Credit. Owner may draw on a Letter of Credit, and may draw multiple times, in amount(s) not to exceed the stated value of the Letter of Credit in Owner's sole discretion, in accordance with the terms of each such Letter of Credit.

(5) Improper Draws. Notwithstanding any other provision of this Contract, if Owner draws on a Letter of Credit in violation of the requirements of this

Contract, Owner shall reimburse the Contractor within two (2) Business Days for such wrongfully demanded payment or wrongfully retained portion of a payment properly demanded, plus interest at the Contract Rate, and, if the improperly drawn upon Letter of Credit is still outstanding or required to be outstanding, the Contractor promptly shall cause such reimbursed amount to be again available for demand thereunder.

(6) Return of Letters of Credit. If the Contractor delivers to Owner a replacement for any Letter of Credit or (ii) the relevant Letter of Credit shall have terminated in accordance with the terms of this Contract, then Owner shall immediately return the relevant Letter of Credit then in Owner's possession to the issuing bank or Contractor for cancellation.

(7) Transfer by Owner of Letter of Credit. All bank administrative fees associated with and imposed by the issuer of the Letter Credit in connection with the transfer by Owner of a Letter of Credit shall be paid by the Owner.

(8) Failure to Renew or Maintain. Contractor shall be in breach of this Contract if Contractor has not renewed or replaced a Letter of Credit required to be provided hereunder no later than twenty-one (21) days prior to the stated expiration date for, or required renewal or replacement date of, such Letter of Credit; and upon Contractor's failure to so renew or replace the Owner shall have the right to draw down the entire amount of such Letter of Credit.

(c) Contractor shall be in breach of this Contract if Contractor has not provided and maintained any Parent Guaranty or Letter of Credit as required by this Contract and upon Contractor's failure to so provide and maintain in accordance with the terms of this Contract, Owner shall have the right to draw down the entire amount of the Letter of Credits. If after any such draw by Owner, the Contractor provides a Letter of Credit satisfying the requirements of this Contract, the Owner shall within ten (10 Business Days return all previously unapplied proceeds to the Contractor.

35.3 Limitations on Contractor's Liability.

35.3.1 Aggregate Liability and Exclusions. In no event shall Contractor's liability pursuant to this Contract, whether arising in contract, warranty, default or otherwise, be greater in the aggregate than an amount equal to one hundred percent (100%) of the Contract Price; provided, however, that nothing contained in this Section 35.3 or in any other provision of this Contract shall be construed to limit Contractor's liabilities for its obligations: (a) with respect to termination, cancellation or non-renewal (or other loss of coverage) of any insurance policy as set forth in Section 25.2(c) of the Contract; (b) with respect to any gross negligence or willful misconduct or fraud on the part of Contractor; or (c) with

respect to any of Contractor's indemnity obligations under Article 25, Article 26, and any other provision in this Contract imposing indemnification obligations.

Notwithstanding anything herein to the contrary, no: (i) liabilities of Contractor to Owner paid for by insurance carried by Contractor pursuant to Article 23 of this Contract or by Owner (except deductibles paid by Contractor); or (ii) the cost of warranty Work performed by any Subcontractor at such Subcontractor's expense and the cost of any warranty Work paid for by any Subcontractor or recovered by Contractor from any Subcontractor shall be included in Contractor's aggregate liability for the purposes of determining the limit on Contractor's liability pursuant to this Contract.

35.3.2 Maximum Delay Liquidated Damages Amounts. Notwithstanding any other provisions in this Contract to the contrary, in no event shall Contractor's aggregate liability under Section 16.1 for Delay Liquidated Damages exceed the Maximum Aggregate Liquidated Damages.

35.4 Limitation on Owner's Liability. In no event shall the aggregate damages payable by Owner hereunder exceed the Contract Price (as the same may be modified by Changes in Work in accordance with the terms of this Contract); provided, however, that nothing contained in this Section 35.4 or in any other provision of this Contract shall be construed to limit Owner's liabilities for its obligations with respect to any of Owner's indemnity obligations for third party Losses under Article 25 and any other provision in this Contract imposing indemnification obligations. Notwithstanding anything herein to the contrary, no liabilities of Owner to Contractor covered by insurance carried by Owner pursuant to Article 23 of this Contract or by Contractor (except deductibles paid by Owner) shall be included in Owner's aggregate liability for purposes of determining the limit on Owner's liability pursuant to this Contract.

35.5 Releases, Indemnities and Limitations. Releases, indemnities, or limitations on liability expressed in this Contract shall apply in accordance with the terms of this Contract, notwithstanding other legal bases of responsibility such as negligence, strict liability, fault, or breach of contract of the Party indemnified or whose liability is released or limited.

36. DISPUTES

36.1 Negotiations. Any disputes arising pursuant to this Contract that cannot be resolved between Owner's Project Representative and Contractor's Project Manager within fourteen (14) days or, in the case of payment disputes, three (3) Business Days after receipt by each thereof of Notice of such dispute (specifically referencing this Section 36.1) shall be referred, by Notice signed by Owner's Project Representative and Contractor's Project Manager, to the executive officers of the Parties designated in Section 37.4 as their designated representatives (which shall not be the Owner's Project Representative or the Contractor's Project Manager) for resolution.

If the Parties, negotiating in good faith, fail to reach an agreement within a reasonable period of time, not exceeding twenty (20) days or, in the case of payment disputes, ten (10) days after such referral, then Owner or Contractor may institute proceedings as set forth in Section 36.2.

36.2 Dispute Resolution. If the Parties, negotiating in good faith, fail to reach an agreement within the period of time set forth above in Section 36.1, then Owner and Contractor agree that any and all disputes arising from, relating to or in connection with the Contract, whether based on contract, tort or otherwise shall be submitted to the jurisdiction of the federal or state courts located in Utah, to the exclusion of any and all other courts, forums, venues, and the Parties waive any and all right to contest the exclusivity of such forum, including any rights based upon the doctrine of forum non conveniens.

36.3 Work to Continue. Unless otherwise agreed in writing, Contractor shall diligently carry on the Work and shall not interfere with, restrict or discourage the prompt completion of any portion of the Work, the correction of any Defects or the provision of any warranty service during of the pendency of any dispute proceedings, as required under the terms of this Contract, and Owner shall continue to make undisputed payments and perform its obligations under this Contract; provided that, during the pendency of any dispute proceeding, amounts constituting Delay Liquidated Damages shall be paid and no set-off against such amounts shall be taken by Contractor and, to the extent Delay Liquidated Damages are unpaid, Owner may exercise its set-off rights pursuant to Section 37.17.

37. MISCELLANEOUS

37.1 Severability. The invalidity or unenforceability of any portion or provision of this Contract shall in no way affect the validity or enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be deemed severed from this Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain such invalid or unenforceable portion or provision. If any such provision of this Contract is so declared invalid, the Parties shall promptly negotiate in good faith new provisions to eliminate such invalidity and to restore this Contract as near as possible to its original intent and effect.

37.2 Governing Law. This Contract shall be governed by the internal laws of the state where the Work is to be performed excluding its conflict of laws provisions. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS CONTRACT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN

WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. IF A WAIVER OF JURY TRIAL IS DEEMED BY ANY COURT OF COMPETENT JURISDICTION TO NOT BE ENFORCEABLE FOR ANY REASON, THEN TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO AGREE TO BINDING ARBITRATION. SUCH ARBITRATION SHALL BE IN ACCORDANCE WITH THE RULES AND PROCEDURES OF THE AMERICAN ARBITRATION ASSOCIATION (AAA). NOTWITHSTANDING ANY AAA RULES AND PROCEDURES OR ANY OTHER PROVISIONS OR ANY STATE OR FEDERAL LAWS, THE PARTIES AGREE THAT THE ARBITRATORS SHALL NOT CONSIDER OR AWARD PUNITIVE DAMAGES AS A REMEDY. UPON THE OWNER'S REQUEST, AAA SHALL PROVIDE THE PARTIES A LIST OF ARBITRATORS EACH OF WHOM HAVE EXPERIENCE AND EXPERTISE WITH RESPECT TO CONSTRUCTION. UPON EACH OF THE PARTIES RECEIPT OF SUCH LIST, EACH PARTY SHALL HAVE TEN (10) DAYS TO SELECT AN ARBITRATOR. THE TWO SELECTED ARBITRATORS SHALL THEN SELECT A THIRD ARBITRATOR WITHIN THIRTY (30) DAYS FROM THE DATE THE INITIAL TWO ARBITRATORS WERE SELECTED AND THE MATTER SUBJECT TO ARBITRATION SHALL BE ARBITRATED WITHIN ONE HUNDRED EIGHTY (180) DAYS AFTER THE SELECTION OF THE THIRD ARBITRATOR.

37.3 Survival of Termination. The representations, warranties, rights and obligations of the Parties and any other provisions of this Contract which by their nature are intended to survive the termination or expiration of this Contract shall continue in force and effect beyond the expiration or termination of this Contract and shall inure to the benefit of the Parties.

37.4 No Oral Modification. No oral or written amendment or modification of this Contract (including a Change in Work Form accepted under Article 17) by any officer, agent, or employee of Contractor or Owner, either before or after execution of this Contract, shall be of any force or effect unless such amendment or modification or Change in Work Form is in writing and is signed by any President, any Vice President or the Chief Executive Officer of the Party (or of the managing member of the Party on behalf of the Party) to be bound thereby.

37.5 No Waiver. Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions, or other provisions of this Contract at any time shall not in any way affect, limit, modify, or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition, or other provision hereof, any course of dealing or custom of the trade notwithstanding. All waivers must be in writing and signed on behalf of Owner and Contractor by the individuals identified in Section 37.4.

37.1. Time of Essence. Time is of the essence with respect to the performance by Contractor of its obligations under this Contract.

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Both Parties have caused an individual with the requisite authority to acknowledge this and each page of this Contract prior to execution.

Contractor: Initial _____

Company: Initial _____

37.2. Contract Interest Rate. Overdue undisputed payment obligations of the Owner and the Contractor hereunder shall bear interest from the date due until the date paid at a rate per annum equal to the lesser of: (a) Prime Rate in effect from time to time plus three percent (3%); and (b) the highest rate permitted by Applicable Laws.

37.3. Headings for Convenience Only. The headings contained herein are not part of this Contract and are included solely for the convenience of the Parties.

37.4. Third-Party Beneficiaries. The provisions of this Contract are intended for the sole benefit of Owner and Contractor and there are no third party beneficiaries hereof, except where otherwise expressly provided, other than assignees contemplated by the terms herein.

37.5. Language. The language of this Contract is the English language, which shall be the ruling language in which the Contract shall be construed and interpreted. All correspondence, Drawings and Specifications, Contractor Deliverables, test reports, Notices, certificates, Required Manuals and other information shall be entirely in the English language.

37.6. Drafting Interpretations. Preparation of this Contract has been a joint effort of the Parties and the resulting documents shall not be construed more severely against one of the Parties than against the other.

37.7. Further Assurances. Owner and Contractor will each use reasonable efforts to implement the provisions of this Contract, and for such purpose each, at the request of the other, will, without further consideration, promptly execute and deliver or cause to be executed and delivered to the other such assistance, or assignments, consents or other instruments in addition to those required by this Contract, in form and substance satisfactory to the other, as the other may reasonably deem necessary or desirable to implement any provision of this Contract. Additionally, in the event that either Party has reasonable cause to suspect that the other Party's ability to perform its respective obligations under this Contract has been substantially impaired, the impaired Party shall upon request, provide the requesting Party with reasonably adequate assurance of its intention and ability to continue its performance as required by this Contract.

37.8. Record Retention. Contractor agrees to retain for a period of seven (7) years from the Final Completion Date or any longer period as may be required by Applicable Laws all records relating to its performance of the Work or Contractor's warranty obligations herein, and agrees to cause all Subcontractors engaged in connection with the Work or the performance by Contractor of its warranty obligations herein to retain for the same period all their records relating to the Work.

37.9. Binding on Successors. This Contract shall be binding on the Parties hereto and on their respective successors, heirs and permitted assigns.

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Both Parties have caused an individual with the requisite authority to acknowledge this and each page of this Contract prior to execution.

Contractor: Initial _____

Company: Initial _____

37.10. Merger of Prior Contracts. This Contract supersedes any other agreement, whether written or oral, that may have been made or entered into between Owner and Contractor or by any officer or officers of such Parties relating to the Project or the Work. This Contract and Exhibits hereto constitutes the entire agreement between the Parties with respect to the Project, and there are no other agreements or commitments with respect to the Project except as set forth herein.

37.11. Counterpart Execution. This Contract may be executed by the Parties hereto in any number of counterparts (and by each of the Parties hereto on separate counterparts), each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

37.12. Set-Off. Either Party may at any time, but shall be under no obligation to, set off any and all sums due from the other Party against sums due to such Party hereunder.

37.13. Further Information. To the extent Contractor does not file financial statements with the United States Security and Exchange Commission, the Contractor agrees from time to time to provide the Owner such information and documents (financial or otherwise) regarding the Contractor as the Owner may reasonable request at Contractor's cost and expense.

37.19 Term The Contract shall be effective for Work performed pursuant to a Release that is authorized during the Contract Term, whether or not such Work is completed prior to the expiration of such Contract Term. The expiration of the Contract Term shall not impact the Parties' respective rights or obligations with respect to any Work authorized prior to expiration of such Contract Term. Moreover, neither the expiration of the Contract Term nor any earlier termination of this Contract shall impact any warranties, indemnities, insurance requirements, confidentiality obligations, termination obligations, or other obligations with by their own terms are intended to survive the completion of Work, all of which shall continue in full force and effect after the expiration or termination of this Contract.

38. NERC CIPS COMPLIANCE

38.1 In the event that the Work under this Contract requires any (i) authorized unescorted physical access to Owner's Facilities (i.e., Unescorted Personnel), or (ii) authorized unescorted physical access or authorized cyber access to Owner's CIP Covered Assets (i.e., Sensitive Personnel), Contractor, Unescorted Personnel, and Sensitive Personnel shall be required to comply with North American Electric Reliability Corporation ("NERC") Critical Infrastructure Protection Standards ("CIPS"), as adopted by Owner and attached hereto as Exhibit "S", Background Check Criteria – NERC / CIPS Standards. For all Unescorted Personnel and Sensitive Personnel, Contractor shall:

- (a) Ensure that Unescorted Personnel and Sensitive Personnel have passed the background checks outlined in Section 38.3(a) consistent with the Owner's Background Check Criteria set forth on Exhibit "S" prior to requesting unescorted physical access and/or cyber access to Owner's Facilities and/or CIPS Covered Assets, as applicable;
- (b) Ensure that Unescorted Personnel and Sensitive Personnel complete Owner provided or approved initial CIPS compliance training prior to requesting unescorted physical access and/or cyber access to Owner's Facilities and/or CIPS Covered Assets, as applicable;
- (c) Ensure that Unescorted Personnel and Sensitive Personnel have passed Contractor's drug and alcohol exam and are in compliance with Contractor's substance abuse/drug and alcohol policy as outlined in Section 38.5; and
- (d) Keep accurate and detailed documentation to confirm completion dates for background checks, all CIPS compliance training (initial and annual training, to the extent applicable), and drug tests, and certify to Owner such documentation by completing a Contractor/Vendor Information Form, attached as part of Exhibit "S" hereto, for each Unescorted Personnel and Sensitive Personnel.

Contractor shall not allow any Unescorted Personnel or Sensitive Personnel who have not met the foregoing requirements of this Section 38.1 to perform Work, unless Contractor has received prior written consent from Owner.

38.2 Additional Access Requirements Specific to Sensitive Personnel. In addition to the access requirements outlined in Section 38.1, with respect to all Sensitive Personnel, Contractor also shall:

- (a) Ensure that Sensitive Personnel and any Personnel with access to BCSI are informed of and comply with the requirements of Article 27 contained herein, as well as the requirements set forth herein;
- (b) In addition to the initial CIPS compliance training requirement outlined in Section 38.1(b), ensure that Sensitive Personnel complete Owner provided or approved supplemental CIPS compliance training within Owner's prescribed training window, and not less than on an annual basis; and
- (c) Immediately report both (i) Sensitive Personnel terminations for cause, and (ii) all other Sensitive Personnel terminations or changes in employment status for those who no longer require access, to Owner's Enterprise Service Desk ("ESD"). The ESD is available by calling the Project Representative.

Contractor shall not allow any Sensitive Personnel who have not met the foregoing requirements of this Section 38.2 to perform Work, unless Contractor has received prior written consent from Owner.

38.3 Personnel Screening/Background Check Requirements. For all Unescorted Personnel and Sensitive Personnel, the following requirements must be met by Contractor:

- (a) Contractor shall conduct, at Contractor's cost and expense, the requisite background checks for the current and past countries of residence of all Unescorted Personnel and Sensitive Personnel consistent with Owner's Background Check Criteria set forth on Exhibit "S". All background checks will be conducted in accordance with federal, state, provincial, and local laws, and subject to existing collective bargaining unit agreements or other agreements, if any;
- (b) Following the initial background check to obtain authorization for access, the background checks shall be updated no less frequently than every seven (7) years or upon request by Owner, and shall, at a minimum, consist of a social security number identity verification and seven (7) year criminal background check, including all convictions for a crime punishable by imprisonment for a term exceeding one (1) year;
- (c) Contractor shall ensure that each of the Unescorted Personnel and Sensitive Personnel sign an appropriate authorization form prior to background checks being conducted, acknowledging that the background check is being conducted, and authorizing the information obtained to be provided to Owner;
- (d) Owner has the right to audit Contractor's records supporting each Contractor/Vendor Information Form submitted to Owner, including background check results, and to verify that the requisite background checks and drug tests were performed consistent with Owner's Background Check Criteria, set forth on Exhibit "S". Contractor shall provide Owner with all requested records supporting Contractor/Vendor Information Forms within a reasonable time after receiving such request, and in the form requested by Owner, but not longer than three (3) Business Days following the date of such request;
- (e) For purposes of this Contract, a background check is considered valid pursuant to the Owner's Background Check Criteria, set forth on Exhibit "S", if it was completed within two (2) years prior to the date on which the Contractor signed a Contractor/Vendor Information Form for each Unescorted Personnel and Sensitive Personnel. Regardless of when performed, all background checks shall be documented pursuant to the requirements set forth in this Section 38.3; and

- (f) In the event Owner notifies Contractor of the impending expiration of the background check of any Unescorted Personnel or Sensitive Personnel, Contractor shall provide an updated Contractor/Vendor Information Form reflecting a refreshed background check within twenty (20) days of receipt of the notice, in order to avoid revocation of such person's access.

38.4 Contractor Designee. Contractor shall designate one person to be responsible for compliance with the requirements of this Article 38, and all reporting and inquiries, other than Sensitive Personnel terminations or changes in employment status, shall be made via e-mail to Project Representative. Sensitive Personnel terminations or changes in employment status should be reported to the ESD pursuant to Section 38.2(c).

38.5 Drug Testing.

- (a) Contractor shall have and ensure compliance with a substance abuse/drug and alcohol policy that complies with all applicable federal, provincial and/or local statutes or regulations. Contractor shall subject each of the Personnel to a drug test at Contractor's sole cost and expense. Such drug test shall, at a minimum, be a five (5) Panel Drug Test, which should be recognizable at testing labs as a "SamHSA5 panel at 50NG – THC cut-off."
- (b) For any Personnel who have had a recent drug test, such recent drug test shall be documented pursuant to the previous paragraph. Contractor warrants that Contractor and the Personnel are in compliance with Contractor's substance abuse/drug and alcohol policy.
- (c) During the course of Work performed under this Contract, Contractor shall keep accurate and detailed documentation of its drug policy and Personnel drug tests, which it shall submit to Owner upon request.
- (d) Contractor shall designate one person to be responsible for compliance with the requirements of this Article 38 and all reporting and inquiries, other than Sensitive Personnel terminations or changes in employment status covered in Section 38.4, shall be made to the Project Representative in a timely manner.

38.6 Department of Transportation Compliance. Contractor shall ensure Department of Transportation compliance, including but not limited to valid driver's license, equipment inspections, hours of service and all appropriate documentation for any Personnel who may drive while on assignment to Owner.

39. CYBER SECURITY

39.1 Scope. This Cybersecurity Article (“Article”) applies to any contractor or supplier (collectively, “Contractor” for purposes of this Article) and its Personnel and Subcontractors that provide hardware, software, or services to the Owner that may impact the confidentiality, integrity, or availability of the Company’s networks, systems, software, Data, or Confidential Information for the term of the Contract.

39.2 Defined Terms.

“Confidential Information” shall have the meaning as defined in the Contract and in addition include any information that can be used to identify or distinguish the identity of an individual, employee, or customer of Company, including but not limited to name, social security number, date and place of birth, customer account number, customer address, customer energy usage information, credit or bank account number, passport or driver’s license numbers, or any information that is linked or linkable to an individual, employee, or customer that is not otherwise classified as public information by Company, including medical, financial, and employment information.

“Data” shall mean any information, formulae, algorithms, or other content that the Company or the Company’s employees, agents and end users upload, create or modify using any software provided pursuant to the Contract. Data also includes user identification information and metadata which may contain Data or from which the Company’s Data may be ascertainable.

“Security Breach” shall mean any act or omission that compromises either the security, confidentiality, or integrity of Company’s Confidential Information, Data, systems and facilities or Company’s physical, technical, administrative or organizational safeguards and controls relating to the protection of Company’s Confidential Information, Data, systems, and facilities.

Any capitalized terms not otherwise defined herein shall have the meaning in the Contract.

39.3 Cybersecurity Controls.

(a) Without limiting Contractor’s obligations elsewhere in this Article or the Contract, Contractor shall implement security safeguards and controls to protect the Company’s networks, systems, software, Data, and Confidential Information that are no less rigorous than accepted industry practices, specifically those set forth in the latest published version of ISO/IEC 27001 – *Information Security Management Systems–Requirements* and ISO/IEC 27002 – *Code of Practice for International Security Management*.

- (b) Contractor agrees to notify the Company of known security vulnerabilities in hardware, software, and services provided under the Contract in a timely manner.
- (c) Contractor warrants that the hardware, software, and patches provided under the Contract will not contain malicious code. Contractor agrees to provide a method to verify the integrity and authenticity of all software and patches provided by the Contractor.
- (d) Contractor shall follow all applicable Company requirements for all remote access to Company resources and systems. To the extent Contractor's Personnel will have interactive remote access to Company's networks, systems or applications, such access must be performed on a secure connection. Contractor shall utilize multi-factor authentication provided by the Company. Authentication tokens and passwords may not be shared without written permission from the Company's Vice President, Information Technology. Immediately upon either (i) Personnel termination actions or (ii) changes in the status of Personnel which removes their need for remote access, Contractor shall report such termination or change in status to the Company's Service Desk.

39.4 Oversight of Compliance. Company reserves the right to conduct an assessment, audit, examination, or review of Contractor's security controls to confirm Contractor's adherence to the terms of this Article, as well as any applicable laws, regulations, and industry standards, not more than once per year or upon notification of any Security Breach or complaint regarding Contractor's privacy and security practices. Company may elect to obtain the services of a mutually-agreeable third party to conduct this assessment, audit, examination, or review on behalf of Company. Company shall give Contractor no less than thirty (30) calendar days' notice of its intent to conduct such assessment, audit, examination, or review. As part of this assessment, audit, examination, or review, Company may review all controls in Contractor's physical and/or technical environment in relation to all Confidential Information being handled and/or hardware, software, or services being provided pursuant to this Contract. Contractor shall fully cooperate with such assessment by providing access to knowledgeable personnel, physical premises, documentation, infrastructure, application software, and systems relevant to the provision of hardware, software, or services under the Contract.

39.5 Security Breach Procedures; Equitable Relief. In the event of Security Breach of the contractor or subcontractor affecting the Company, the Company's networks, systems, software, Data, or the Company's Confidential Information,

- (a) Contractor shall:
 - (i) notify the Company of a Security Breach as soon as practicable, but no later than 48 hours after Contractor becomes aware of it by

- telephone at the following number: [insert applicable company's Service Desk number]; and
- (ii) provide the Company with the name and contact information for any Personnel who shall serve as Contractor's primary security contact and shall be available to assist the Company in resolving obligations associated with a Security Breach;

(b) Immediately following Contractor's notification to the Company of a Security Breach, the Parties shall coordinate with each other to investigate such Security Breach. Contractor agrees to coordinate with Company in Company's handling of the matter, including: (i) assisting with any investigation and (ii) making available all relevant records and other materials required to comply with applicable law, regulation, industry standards, or otherwise reasonably required by Company.

(c) Contractor shall use best efforts to immediately remedy any Security Breach and prevent any further or recurrent Security Breach at Contractor's expense in accordance with applicable privacy laws, regulations, and standards. Contractor shall reimburse Company for actual reasonable costs incurred by Company in responding to, and mitigating damages caused by, any Security Breach, including all costs of notice and/or remediation pursuant to this section.

(d) Contractor shall fully cooperate at its own expense with Company in any litigation or other formal action deemed reasonably necessary by Company to protect its rights relating to the use, disclosure, protection, and maintenance of its Confidential Information and Data.

(e) Contractor acknowledges that any breach of Contractor's obligations set forth in this Article may cause Company substantial irreparable harm for which monetary damages would not be adequate compensation and agrees that, in the event of such a breach or threatened breach, Company is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which Company may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other available remedies at law or in equity, subject to any express exclusions or limitations in the Contract to the contrary.

39.6 Network Security & Privacy Liability. If the Work under the Contract involves the rendering of IT services including, but not limited to: software, software or hardware or systems development or consulting services; internet/application services (e.g., web hosting); providing content; connections to systems, technology or network(s); or if Contractor in any way collects, obtains, maintains or in any way accesses or uses Confidential Information or Data, then Contractor, and its Subcontractors, shall maintain Network Security & Privacy Liability coverage, which can be included via evidenced endorsement to Professional Errors & Omissions coverage, throughout the term of this

Contact and for a period of two (2) years thereafter, with a minimum required limit of \$5,000,000 Each Claim.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be executed as of the date and the year first above written.

OWNER:

By: _____

Name: _____

Title: _____

CONTRACTOR:

[_____]

By: _____

Name: _____

Title: _____

Contract No. _____

MASTER CONSTRUCTION CONTRACT

BETWEEN

PACIFICORP

AND

FOR

LINE SERVICE AGREEMENT

INCLUDING DISTRIBUTION, TRANSMISSION, AND SUBSTATION CONSTRUCTION AND MAINTENANCE

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Exhibit B-2	Unit Price Rate Schedule for Pole Replacement for Oregon, California, Washington, Idaho, Utah, and Wyoming
Exhibit B-3	Unit Price Rate Schedule for Overhead Maintenance for Oregon, California, Washington, Idaho, Utah, and Wyoming
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Exhibit R	Contractor / Vendor Information Form
Exhibit S-1	General Conditions for Performing Contract Design/Estimating Services
Exhibit S-2	PacifiCorp Electronic Communications and Computer Resources Policy
Exhibit T	Requirements for Interactions with Company Customers
Exhibit U	Critical Path Schedule Instructions
Exhibit V	RESERVED
Exhibit W	Change Order Form
Exhibit X	RESERVED
Exhibit Y	Customer Guarantees
Exhibit Z	Environmental Requirements
Exhibit AA	RESERVED
Exhibit AB	RESERVED
Exhibit AC	Sales Tax Compliance

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MASTER CONSTRUCTION CONTRACT

BETWEEN

PACIFICORP

AND

FOR

**OUTSIDE ELECTRICAL SERVICES (LINE CREW SERVICES)
INCLUDING DISTRIBUTION, TRANSMISSION, AND SUBSTATION CONSTRUCTION AND MAINTENANCE**

PARTIES

The Parties to this Master Construction Contract for Outside Electrical Services (Line Crew Services) including Distribution, Transmission and Substation Construction and Maintenance ("Contract") are **PACIFICORP** (hereinafter "Company") whose address is 825 NE Multnomah Street, Portland, Oregon 97232 and (hereinafter "Contractor") whose address is . Company and Contractor are hereinafter sometimes collectively referred to as "Parties" and individually as a "Party," as the context may require.

ARTICLE 1. DEFINITIONS

As used in this Contract and any individual Release entered into hereunder, the following terms have the meanings set forth below. Unless another meaning is specifically required by the context, when the following capitalized terms are used, such terms shall refer to the definitions set forth herein. All exhibits listed in the Table of Contents shall form a part of this Contract whether or not referenced in the master terms and conditions below.

BES Cyber System Information (BCSI) shall mean information concerning CIPS Covered Assets that: (i) relates to the production, generation or transmission of energy; (ii) could be useful to a person planning an attack on critical infrastructure; and (iii) provides strategic information beyond the geographic location of the critical asset, and which is identified as BCSI by Company. BCSI also includes any information concerning CIPS Covered Assets that has been identified by Company as Critical Infrastructure Information (or CII).

CIPS Covered Assets shall mean any assets identified by Company as "critical assets," "critical cyber assets," "BES assets," "BES cyber assets," or "BES cyber systems," as those terms are defined in the North American Electric Reliability Corporation (NERC) Glossary of Terms. "BES" refers to the "Bulk Electric System" as defined by NERC.

Company's Facilities shall mean any facilities owned, operated or otherwise controlled by Company which require Company authorization to obtain access.

Company-Furnished Materials shall mean any products, equipment, materials, goods, parts, associated hardware and spare parts specifically identified in the Scope of Work as being furnished by Company in conjunction with the improvements installed by Contractor under any Release.

Contract Price shall mean the consideration specified for Work in a Release. Except as otherwise provided in a Release, the Contract Price shall be a fixed-price, lump sum amount or unit price.

Contractor-Furnished Materials shall mean all products, equipment, materials, goods, parts, associated hardware and spare parts to be furnished by Contractor and made part of the improvements installed by Contractor under any Release. Except for products, equipment, materials, goods, parts, associated hardware and spare parts specifically identified as Company-Furnished Materials, all items necessary to complete the Work shall be deemed to be Contractor-Furnished Materials.

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Critical Contractor Milestones shall mean any interim completion milestones specified in a Release for which Contractor guarantees completion by a specific date prior to the Substantial Completion Guaranteed Date.

Critical Infrastructure Information (CII) shall mean information concerning CIPS Covered Assets that: (i) relates to the production, generation or transmission of energy; (ii) could be useful to a person planning an attack on critical infrastructure; and (iii) provides strategic information beyond the geographic location of the critical asset, and which is identified as CII by Company.

Critical Path Schedule shall mean, with respect to each Release, a critical path method schedule prepared by Contractor describing the time of completion of critical path items, and setting forth the dependencies among all critical path items that affect the achievement of the Project Guaranteed Dates.

Deliverables shall mean all drawings, manuals, calculations, specifications, maps, sketches, designs, tracings, notes, testing results, reports, data, computer programs, models, plans, lien releases, attestations, programs, procedures, protocols, samples and other documents and deliverables that are to be provided, obtained, prepared and delivered to Company by Contractor, as set forth in the applicable Scope of Work, the applicable Release and this Contract.

Default Security shall have the meaning set forth in ARTICLE 11, DEFAULT SECURITY.

Emergency shall mean conditions under which, without effecting an immediate repair or replacement: (i) life, health, or safety would be endangered by operation of Company's assets; (ii) Company's assets would be unavailable for commercial use; (iii) Company's customer's would not have electrical service; or (iv) Company's assets could not be operated, or demonstrated to be operating, in compliance with a) environmental regulations; b) regulations, policies or procedures issued by governmental or regulatory authorities; or c) prudent utility practice.

Final Completion shall mean satisfaction of all of the conditions for Final Completion as set forth in ARTICLE 56, SCHEDULE.

Final Punch list Items shall mean, with respect to the facilities constructed or installed pursuant to any Release, Work that: (a) requires completion or contains defects; (b) does not impede the ability of Company to safely operate the facilities in accordance with applicable laws, permits and industry standards; (c) does not affect the operability (including the capacity, efficiency, reliability, or cost effectiveness), safety or mechanical or electrical integrity of the facility or Company's transmission system; and (d) the completion or repair of which will neither interfere with, nor adversely affect, the performance of the facility or Company's transmission system.

Force Majeure Event shall mean a delay caused by any national or general strikes (but excluding strikes relating solely to the work force of Company, Contractor or a Subcontractor), fires, riots, acts of God, acts of the public enemy, floods, acts of terrorism, unavoidable transportation accidents or embargoes, or other events which are: (i) not reasonably foreseeable as of the date the applicable Release was executed; and (ii) attributable to a cause beyond the control and without the fault or negligence of the Party incurring such delay. The term Force Majeure Event does not include a delay caused by seasonal weather conditions, inadequate construction forces, general economic conditions, changes in the costs of goods, or Contractor's failure to place orders for Contractor-Furnished Materials, construction equipment or other items sufficiently in advance to ensure the Work is completed in accordance with the Contract and the applicable Release.

Hazardous Materials shall mean any chemical, material or substance in any form, whether solid, liquid, gaseous, semisolid, or any combination thereof, whether waste material, raw material, chemical, finished product, byproduct, or any other material or article, that is defined, listed or regulated, or as to which liability could be imposed, under applicable laws as a "hazardous" or "toxic" substance or waste or material, or as a "pollutant" or "contaminant" (or words of similar meaning or import), or is otherwise listed or regulated under applicable laws, or as to which liability could be imposed, under applicable laws including, without limitation, petroleum products, petroleum derived substances, radioactive materials, asbestos, asbestos containing materials, polychlorinated biphenyls, urea formaldehyde foam insulation, and lead containing paints or coatings.

Material Adverse Change (MAC) shall mean, with respect to Contractor, if Contractor, in the reasonable opinion of Company, has experienced a material adverse change in Contractor's financial condition or Contractor's ability to fulfill its obligations under this Contract including, but not limited to, any such change that results in its inability to satisfy ARTICLE 10, CREDIT REQUIREMENTS or ARTICLE 11, DEFAULT SECURITY, including any event or circumstance that would give Company the right to terminate for cause pursuant to ARTICLE 55, TERMINATION FOR CAUSE.

Net Replacement Costs shall mean the "cost to cover" remedy available to Company in the event of a default by Contractor under this Contract and each Release. The Net Replacement Costs shall be calculated by: (i) subtracting the unpaid balance of the total

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price of the Work to be performed from the costs incurred by Company to obtain a replacement contractor to finish the Work that Contractor was otherwise obligated to provide under this Contract or any Release (or the costs, internal or third-party, incurred by Company to complete such remaining Work itself); and (ii) adding a sum for additional managerial, administrative, and other reasonable costs Company incurs as a result of Contractor's default.

Notice shall mean a formal written communication which, pursuant to the Contract, one Party must deliver to the other in order to invoke a Contract right set forth herein.

Personnel shall mean the employees of Contractor or any of its agents, Subcontractors, or independent contractors who are employed to perform Work under this Contract.

Project Guaranteed Dates shall mean, with respect to a given project, the Critical Contractor Milestones and the Substantial Completion Guaranteed Date.

Qualified Person shall have the meaning set forth in 29 CFR §1910.

Release shall mean any project-specific Work release or Purchase Order issued by Company from time to time pursuant to the master terms and conditions set forth in this Contract.

Scope of Work shall mean the requirements regarding the Work, as detailed in the "scope of work" or "specifications" attachment appended to (or incorporated by reference in) the Release for specific Work assignments and including any standards, specifications, drawings, permits, or other contract documents attached to or incorporated by reference.

Sensitive Personnel shall mean all Personnel with authorized unescorted physical access or authorized cyber access to Company's CIPS Covered Assets.

Subcontractor shall mean any entity or person (including subcontractors at any tier, laborers and materials suppliers) having an agreement with Contractor or any other Subcontractor to perform a portion of Contractor's obligations under this Contract.

Substantial Completion Guaranteed Date shall mean, with respect to a given project, the date specified therefore in a given Release.

Term shall mean the period commencing January 1, 2018, and continuing thereafter until December 31, 2020, unless earlier terminated as provided herein.

Unescorted Personnel shall mean all Personnel with authorized unescorted physical access to Company's Facilities.

Work shall mean all obligations, duties, requirements, and responsibilities of Contractor for the successful completion of each project described in a Release, including providing all Contractor-Furnished Materials and construction services (including obtaining all applicable licenses and permits) in accordance with the terms and conditions set forth in the Contract, and inclusive of those detailed within a project-specific Release.

Work Site shall mean the location or locations on Company's property, right of way, material loading, unloading and laydown yards, or adjacent areas where the Work is to be performed, as specified in the applicable Scope of Work.

Workers' Compensation Laws shall mean the statutory requirements of the state and/or federal regulations (e.g., FELA, USL&H, Jones Act) where the Work is to be performed.

Work Site shall mean the location or locations on Company's property, right of way, material loading, unloading and laydown yards, or adjacent areas where the Work is to be performed, as specified in each applicable Release.

ARTICLE 2. DESCRIPTION OF WORK

Contractor shall perform the Work in accordance with the Scope of Work. In addition to the Scope of Work, Contractor shall ensure that the Work is performed in compliance with all applicable construction standards, electric service requirements, materials specifications, and other engineering and construction publications (collectively the "General PacifiCorp Work Requirements") as may be effective at the time that Work is performed. On-going protected access to an electronic site will be provided to Contractor and is hereby incorporated into this Contract by reference as Exhibit A. Contractor acknowledges the separate receipt of Exhibit A. Contractor further acknowledges that revisions to the General PacifiCorp Work Requirements will be made periodically. Company may make revisions available to Contractor via dissemination through a centralized electronic database for which Contractor will be granted a login name and password. Revisions to the General PacifiCorp Work Requirements shall be effective when so disseminated or published. Contractor shall be solely responsible for informing itself as to the content of the General PacifiCorp Work Requirements. Contractor shall be responsible for complying with the most current version of the

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General PacifiCorp Work Requirements, regardless of whether such General PacifiCorp Work Requirements are specifically referenced in the Scope of Work.

Any estimating Work to be performed by Contractor shall be performed in accordance with Exhibit S-1 and S-2.

Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of performing the Work, except as otherwise specifically provided in the Contract or in the applicable Release. Except as otherwise specifically provided in this Contract or in the applicable Release, Contractor shall provide all necessary utilities and support services.

ARTICLE 3. PERIOD OF PERFORMANCE

The Contract shall be effective for Work performed pursuant to a Release that is authorized during the Term of the Contract, whether or not such Work is completed prior to the expiration of such Term. The expiration of the Term shall not impact the Parties' respective rights or obligations with respect to any Work authorized pursuant to a Release executed prior to expiration. Moreover, neither the expiration of the Term nor any earlier termination of this Contract or any Release issued hereunder shall impact any warranties, indemnities, insurance requirements, confidentiality obligations, termination obligations, or other obligations which by their own terms are intended to survive the completion of the Work, all of which shall continue in full force and effect after the expiration or termination of this Contract.

The Release shall specify a completion date for the Work, and may also specify critical interim schedule milestones that must be met by Contractor. Contractor shall proceed in accordance with such schedule requirements, and shall comply (as applicable) with the detailed schedule of Work included in (or developed in accordance with) the Release. Time and schedule requirements included within the Release are of the essence. By accepting and commencing Work pursuant to a Release, Contractor confirms that the time and schedule requirements included in the Release are reasonable for performance of the Work.

ARTICLE 4. RELEASES

For each project to be performed under this Contract, the Company will submit to Contractor a Release. A unique Release, each with a corresponding unique identifying number, shall be provided for each new project issued under this Contract. The Release will identify and describe: (i) the Scope of Work for the project; (ii) the location of the Work Site; (iii) the project schedule, schedule milestones, and guaranteed dates for the Work; (iv) the fixed price, unit price or other pricing structure and payment terms that will apply to the project; (v) whether the performance of such Work will require use of Unescorted Personnel or Sensitive Personnel; (vi) the designated project representatives for each Party; (vii) project-specific invoicing instructions; (viii) whether the project or Work constitutes a Major Substation, Transmission and Distribution Project and (ix) any other project-specific terms and conditions applicable to the Work. The terms and conditions of this Contract shall apply to each Release, as supplemented by the project-specific elements of the Work identified in the Release. This Contract and the applicable Release (including the Scope of Work for the project and documents specifically incorporated into the Release by reference) shall, together, constitute the entire agreement between the Parties with respect to any specific Work assignment under this Contract, to the exclusion of any contrary or additional terms contained in any proposal, acknowledgement, confirmation statement, invoice or other document. Unless otherwise agreed between the Parties, the Release will be issued in the form of a purchase order issued through the Company's procurement system in substantially the form attached hereto as Exhibit D.

IN THE EVENT THE RELEASE IDENTIFIES THE PROJECT OR WORK AS A MAJOR SUBSTATION, TRANSMISSION AND DISTRIBUTION PROJECT, THE ADDITIONAL TERMS AND CONDITIONS IN EXHIBIT J WILL APPLY.

In the event of any Emergency, Company will provide Contractor with a verbal notice to be followed as soon as practicable thereafter by a Release.

ARTICLE 5. CONSIDERATION

One of the following pricing structures shall apply to Work issued under this Contract and the applicable pricing structure and payment terms shall be specified in the applicable Release:

- a. a unit price basis for the Work performed,
- b. an hourly rate basis for the labor and equipment furnished,
- c. a firm fixed price basis for the tasks performed, or
- d. another mutually agreed upon pricing basis,

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During the Term of the Contract, the rates identified in all of the exhibits referenced below shall be adjusted annually in accordance with the attached rate schedules during the Term. The rate schedule adjustment shall be made on January 1 of each year of the Contract.

Specific pricing will be established in accordance with the applicable price schedule or method listed below:

Unit Price based consideration determined in accordance with Exhibits B-1 through B-7 as described in the Pricing Schedule notes associated with each category of units.

Time and Expense based consideration determined in accordance with Exhibit C-1 and C-2.

The rates identified in the above listed Contract Exhibit C-1 shall be, for work performed on a Time and Expense Rate basis, as detailed in the above listed Contract exhibits, in accordance with the following:

1. The rates identified in Contract Exhibit C-1 shall be applied to the hours worked in accordance with the provisions established in the applicable Bargaining Unit Agreements for the State and Local where the Work is performed; and/or in accordance with the prevailing wage rates established for the area where the work is to be performed.
2. Compensable time at the indicated rates shall commence at the Company designated starting time and at the Company designated job show-up location with equipment, material and manpower ready to start productive activity.
3. Subject to pre-authorization by the designated representative, or his designee, in addition to the rates indicated for manpower and equipment Company shall pay Contractor applicable per diem, mileage, or subsistence rates as set forth in the collective bargaining agreement or working arrangements applicable to the Work.
4. Company Customer Guarantees, as set forth in the attached Exhibit M and Exhibit Y and all associated documentation, including but not limited to Exhibit T, are required to be fulfilled.

The rates identified in the above listed Contract Exhibit C-2 shall be in accordance with the following:

1. The rates for "Equipment Mobilization" shall be a one-time charge per continuous assignment or project, applicable for Work started at a different Operations Center or Work Site show-up location on the Company Distribution and Transmission System, and includes all equipment and labor mobilization and demobilization costs and the initial setup of the equipment at the Company designated location or service area. The mobilization distances are from Contractor's nearest yard/facilities or the current location of the major equipment mobilized, whichever is less.
2. The rates listed for "Equipment Rates" apply for both daily transit time from equipment staging/storage location and actual time on the worksite.
3. Materials: Company will pay Contractor at invoiced amount to Contractor plus the Contractor mark-up percentage indicated in Exhibit C-1 for Contractor-Furnished Materials incorporated into the work, provided prior authorization has been given by Company.
4. Subcontract Work: Company will pay Contractor at invoiced amount to Contractor plus the Contractor mark-up percentage indicated in Exhibit C-1 for that portion of the work, which is subcontracted to others, provided prior authorization has been given by Company.
5. Equipment and Tool Rental: Company will pay Contractor for use of equipment and tools in performance of the work at the rates listed in Exhibit C-2, subject to the conditions listed below.
 - a. Equipment categorization designations are only intended as generic identification, different makes/models with similar ratings and/or capacities may be used instead of the indicated makes/models. Contractor will ensure all equipment; tools and communication devices are in safe and proper working condition to support the required work.
 - b. Rates indicated in Exhibit C-2 shall compensate Contractor for Contractor owned or leased equipment. For any additional equipment furnished by Contractor, which is not owned or leased by Contractor, use of which has been approved by the Company, Company shall compensate the Contractor at the actual invoice cost to

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Contractor, and the Contractor markup percentage indicated in Exhibit C-2, for such Contractor-furnished equipment. Contractor shall submit with its invoices to Company documentation to support all Contractor-furnished equipment costs.

- c. Hourly rates shall apply for less than 36 hours use in a week.
- d. Weekly rates shall apply for continuous assignments of at least 36 hours in a week.
- e. Monthly rates shall apply for work assignments of four weeks or longer. Equipment rates shall include all costs to fuel and maintain the tools and equipment.
- f. No rental charges will be allowed for an item of equipment or a tool having a new cost of \$500.00 or less.
- g. Except as provided in item "j" below, rental charges will be allowed only when the tool or equipment is actually being used for the proper and efficient performance of the work, including the use of equipment for transporting other items of equipment during mobilization and demobilization.
- h. Rental charges for standby time may be allowed provided prior authorization has been given by Company. Standby rates shall be as negotiated between Company and Contractor prior to use of the tool or equipment.
- i. Contractor shall furnish each crew with an adequate stock of tools to perform work hereunder, at Contractor's expense. A normal stock of tools, to be provided by Contractor, shall include but not be limited to the items as further detailed on Exhibit I. Company shall be the sole judge as to the adequacy of the tools provided. When specialty tools are required to perform work hereunder, rental charges for specialty tools will be allowed provided prior authorization has been given by Company. Rates for specialty tools shall be as negotiated between Company and Contractor prior to the use of the tools.
- j. Contractor shall not charge Company for equipment rental, other than those items listed in Exhibit C-2, unless specialty equipment is required to perform work hereunder. When specialty equipment is required to perform work hereunder, rental charges for specialty equipment will be allowed provided prior authorization has been given by Company. Rates for specialty equipment shall be as negotiated between Company and Contractor prior to the use of the equipment.

Firm Fixed Price basis as mutually agreed prior to commencement of specific defined Work activities for an established Release.

For work to be performed on a firm fixed price basis, Company will contact Contractor and request that Contractor submit a firm fixed price for the work as detailed in the Scope of Work for the specific project.

The Firm Fixed Price agreed to with the Contractor shall be the full consideration due Contractor for the satisfactory performance of Contractor's obligations under this Contract. No other or additional compensation for labor, material, equipment, traffic control, or any other expense incurred by Contractor shall be provided.

Company may either accept Contractor's firm fixed price and have the work performed in accordance therewith, or reject it. If Company accepts, Company will issue a Work Release containing the firm fixed price and indicating that payment will be made in accordance therewith.

If Company decides not to accept Contractor's firm fixed price, Company may pursue one of the other options outlined in this Article, or elect not to have the work performed under this Contract.

Other mutually agreed upon pricing basis or such other consideration as may be mutually agreed to and identified in the applicable Work Release.

ARTICLE 6. PAYMENT

Company will pay the Contractor the consideration set forth in the above referenced exhibits within thirty (30) days upon receipt of invoice in strict accordance with the applicable pricing structure.

Contractor shall submit to Company monthly or upon project completion a proper invoice for all Work performed and expenses incurred during the preceding calendar month for each Release issued hereunder. Contractor shall itemize each invoice by applicable Release number. Immediately under each Release number, Contractor shall provide further itemization by listing the applicable activities performed, hours worked, the District and Circuit number, and

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- the specific Unit Price Schedule and Work activity item number and description in the Unit Price Schedule as identified in the applicable Release, or
- the specific rate for time and equipment expenses as show in the Rate Schedule for Time and Equipment Expenses, the documented hours of Work activity and expense items provided during the billing period as identified in the applicable Release,
- the specific Lump Sum firm fixed price for the defined Work activities established in the applicable Release, or
- invoice support documentation as required.

Costs for Work performed under one Release shall not be commingled with the costs for performing Work under any other Release and receipts, if applicable, must be attached. All undisputed invoice amounts will be paid by Company within thirty (30) days of receipt of a proper invoice and Company's acceptance of the Work.

All invoices submitted for payment of Work performed in accordance with this Contract shall be submitted either in hardcopy or electronically as directed by the Company, in the applicable release and shall adhere to the guidelines established in Exhibit F.

For Work performed on a Unit Price basis or on a Time and Expense basis, Contractor shall submit to Company within a thirty (30) day period following completion of each week in which Work was performed a correct and complete invoice for the value of the Work performed during the Work week period covered by the invoice. Each invoice submitted shall be in a format substantially as shown in Exhibit F, and shall also be accompanied by a progress report pursuant to ARTICLE 7, PROGRESS REPORTING. Weekly invoices shall contain such other supporting documents as required by Company. For any Work authorized by Company to be performed on a time and expense basis, the supporting documentation shall include, without limitation, time sheets, purchase orders for materials and similar data. Weekly invoices shall be submitted in original and one (1) copy to the individual and location identified in the Work release. Upon request by Company, Contractor shall send copies of invoices to other locations as directed.

For Work performed based on a firm fixed price, Contractor shall submit to Company monthly a proper invoice for the value of the Work performed during the preceding month. Within thirty (30) calendar days of Company's receipt and approval of a proper invoice, Company will pay all undisputed invoice amounts less retention of five percent (5%).

Payment shall be contingent upon Contractor's satisfactory compliance with all provisions of this Contract. Payments made by Company shall not be deemed acceptance of Contractor's Work. All invoices submitted for Work accomplished under this Contract shall include the applicable Release number, shall contain supporting documents and receipts as required by Company.

**INVOICES WHICH DO NOT CONTAIN THE ABOVE INFORMATION, OR ARE NOT
ADDRESSED AS ABOVE, MAY CAUSE PAYMENT DELAY.**

Contractor shall identify and clearly set forth on each invoice a discount of not less than two percent (2%) of the total amount of the invoice for payment of the invoice in not more than ten (10) calendar days from the date of receipt by the Company of the invoice. For payment beyond ten (10) calendar days following the date of receipt by the Company of an acceptable invoice payment shall be made in the full amount of the invoice.

For Work undertaken within the scope of this Contract, the final payment for an individual Release shall not become due until Contractor has furnished Company a release from all claims and demands arising out of said Release pursuant to Exhibit E attached hereto and by this reference incorporated herein. Final payment for an individual Release, including retention, if any, shall be paid upon receipt and approval of the amount due after receipt of the final invoice for each Release from the Contractor, following completion of all Work for each individual Release completed by the Contractor, and acceptance thereof by Company and (to the extent required by Company) each Subcontractor, such lien waivers to be in the form set forth in Exhibit E.

Company may offset any such payment to reflect amounts owing from Contractor to Company or its subsidiaries pursuant to this Contract or any other agreement between the Parties or otherwise. In addition, Company may withhold all payments otherwise due Contractor until such time as Contractor has provided the Letter of Credit required by this Contract.

ARTICLE 7. PROGRESS REPORTING

Contractor shall submit with each weekly invoice a weekly progress report for the applicable service territory containing copies of the current week time sheets, where applicable for hourly Work, and project status information as required.

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ARTICLE 8. TAXES

The Consideration to be paid under this Contract, as stated in ARTICLE 6, PAYMENT, includes all taxes of any nature arising out of the Contractor's performance hereunder including, without limitation, state and local sales and use taxes, value-added taxes, import duties, payroll taxes, income taxes and other taxes relating to the performance of the Work.

For purposes of the assessment of state and local sales and uses taxes, it is understood and acknowledged by the Parties that for Work performed in the states of California, Idaho, Utah, and Wyoming, the Contractor is considered to be a "contractor improving real property", as such term is used under applicable state laws, and will thus be the final consumer of all materials and tangible personal property purchased in accordance with the Work. Contractor acknowledges that sales and use taxes paid by Contractor with respect to such purchases will not be separately billed to Company nor reflected on the face of invoices issued to Company.

It is understood and acknowledged by the Parties that for purposes of Work performed in the state of Washington, sales and use taxes for the construction, repair or improvement to real property or to property treated for sales and use tax purposes as real property will be invoiced to Company and reflected as a separate line item on each invoice issued to Company.

Any portion of the Work that does not involve the construction, repair or improvement to real property shall be similarly included as a separate line item on each invoice issued to Company.

Upon request, Contractor will provide Company with additional information, in a form and format reasonably acceptable to Company, evidencing the payment of all state and local sales and uses taxes. If requested by Company Contractor shall provide a completed, notarized, Exhibit AC with the final invoice for each Release issued under this Contract. Contractor shall provide a completed, notarized, Exhibit AC within five (5) working days of Company request for any Release issued under this Contract regardless of status of the Work.

ARTICLE 9. ACCOUNTING AND AUDITING

Contractor shall keep accurate and complete accounting records in support of any cost-based billings and claims to Company in accordance with generally accepted accounting principles. Company, or its audit representatives, shall have the right at any reasonable time or times to examine, audit, and copy the records, vouchers, and other source documents which relate to any claim for compensation other than pricing elements which are fixed in amount by this Contract. Such documents shall be available for examination, audit and reproduction for three (3) years after completion or termination of this Contract.

Contractor shall assist Company with preparing necessary audit material and will allow Company to review any work papers prepared by independent auditors as allowed by professional standards.

Audit findings by Company's representative will be considered to be final and conclusive for the period audited unless Contractor within thirty (30) calendar business days after receipt of the audit findings, submits a written protest to Company pursuant to the last paragraph of ARTICLE 52, CLAIM NOTICE AND RESOLUTION PROCEDURE. Any over collections shall be returned to Company within thirty (30) calendar days from date of Notice of overcharge.

ARTICLE 10. CREDIT REQUIREMENTS

Contractor shall meet the requirements of either clause (i) or clause (ii) below: (i) Contractor maintains a senior unsecured debt rating from Standard & Poor's of BBB- or better; or (ii) if Contractor does not maintain a satisfactory debt rating, Contractor meets ALL of the following credit standards: a) tangible net worth ten (10) times the projected maximum liability of Contractor under this Contract; b) no change in the condition of its earnings, net worth, or working capital over the last twenty-four (24) months, which would reasonably be anticipated to impair Contractor's ability to meet its obligations under this Contract; and c) Contractor is not in default under any of its other agreements and is current on all of its financial obligations.

If requested by Company, Contractor shall within thirty (30) calendar days provide Company with copies of its most recent annual and quarterly financial statements prepared in accordance with generally accepted accounting principles.

ARTICLE 11. DEFAULT SECURITY

In the event Contractor is unable to satisfy the credit requirements set forth in ARTICLE 10, CREDIT REQUIREMENTS at any time during the performance of the Work, or if Contractor experiences a Material Adverse Change at any time during such performance, then Contractor shall provide Company with security against defaults by Contractor under this Contract in such form and amount as may be reasonably required by Company ("Default Security"), and pursuant to such

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additional agreements or instruments as may be reasonably required by Company, including but not limited to letters of credit, third party guaranties, escrow accounts and bonds. Company may at any time, at its own discretion or pursuant to a request by Contractor, recalculate the amount of Default Security required pursuant to this Article, in which case Company shall increase or decrease the existing amount of Default Security, as appropriate. At no time shall the amount of Default Security to which Company is entitled pursuant to this Article be less than Company's Net Replacement Costs.

The terms of any letter of credit required by Company shall conform to the attached Exhibit G, as well as the requirements of this Contract and be issued by a bank acceptable to Company. The letter of credit shall provide for payment to Company of the letter of credit stated amount if Contractor defaults under the terms of this Contract. Company shall have the right to call the entire amount of the letter of credit if Contractor has not renewed the letter of credit thirty (30) calendar days prior to its expiration.

Contractor's expenses of complying with additional Default Security obligations as set forth in this Article shall be borne by Contractor.

ARTICLE 12. WITHHOLDING PAYMENT

Company may, without limiting any other rights or remedies Company may have, withhold from payment amounts which reflect the reasonable cost to repair or replace non-conforming or defective Work or the value of any claim which Company has against Contractor under the Contract. Company may also retain from payment sufficient funds to discharge any delinquent accounts of Contractor for which liens on Company's property have been or can be filed, and Company may at any time pay therefrom for Contractor's account such amounts as are, in the reasonable opinion of Company, due thereon, including any sums due under any federal or state law.

ARTICLE 13. PERFORMANCE CRITERIA

Expected performance criteria shall be established by the Company and compared to actual performance on a regular basis. Targets for expected performance shall be established by the Company for typical Work activities and regularly communicated to the Contractor or as stated in a particular Scope of Work attached to a specific Release.

Contractor shall report all performance errors to Company using the format and protocol provided by Company. Contractor will be held accountable for performance errors and shall participate in the investigation of performance errors at its own expense. Review of performance evaluations shall be a part of the invoice approval process. Payment of invoices will be subject to meeting the standards set by the Company in the areas of timeliness, conformance to scope, design and standards, and quality of the finished product.

Contractor shall adhere to Company guarantees outlined in Exhibit M and Exhibit Y and will be charged any credits associated with non-compliance to any guarantee. Further, Contractor agrees non-compliance results in damage to the Company and Customer's relationship at a higher cost than the cost of customer credits and Company may impose additional damages and possible contract termination for habitual or intentional non-compliance.

ARTICLE 14. KEY PERSONNEL

Prior to changing any key personnel, especially those key personnel whom Company has relied upon in making this Agreement, Contractor shall notify the Company of proposed changes before reassigning key personnel; and any replacement personnel shall have capabilities comparable to those replaced. If Contractor changes or replaces any of its personnel for performance of the services hereunder, Contractor shall bear all costs associated with any and all such changes, and said costs shall not be reimbursable from Company.

Upon request from Company, Contractor shall provide résumés of any potential or replacement supervisors before they are assigned to the Work. Contractor shall establish telephone numbers at which Company and customers may contact the supervisors.

Company shall advise Contractor within thirty (30) days of any reassignment involving key Company personnel involved in the operations of its distribution and transmission system.

ARTICLE 15. DESIGNATED REPRESENTATIVE AND NOTICES

In conjunction with each Release, each Party shall designate a representative authorized to act on its respective behalf and shall advise the other Party in writing of the name, address and telephone number of such designated representative. All

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communications relating to the day-to-day activities under this Contract shall be exchanged between such designated representatives through any agreed form of communication.

Any formal Notice required to be delivered in writing under the terms of this Contract shall be delivered to the representative of the other Party as designated below. All formal written Notices shall be: (i) hand delivered; (ii) deposited in the mail, properly stamped with the required postage; (iii) sent via registered or certified mail; or (iv) sent via recognized overnight courier service. The Parties' addresses for purposes of Notice shall be as set forth below:

If to Company:

PacifiCorp

825 Multnomah Street, Suite 1700

Portland, Oregon 97232

Attn: Tim Adams

Telephone: 503-813-5816

If to Contractor:

Attn: _____

Telephone: _____

Either Party may change the name or address of the designated recipient of Notices by delivery of a Notice of such change as provided for in this Article.

ARTICLE 16. QUALITY ASSURANCE

The Contractor shall provide and maintain a system of quality assurance which will ensure that all required technical provisions and professional standards are being adhered to on a consistent basis by the Contractor and its Subcontractors in the performance of Work under this Contract. The required system of quality assurance shall include but not be limited to: (i) processes, inspections, and reporting activities needed to properly and competently perform the Work; (ii) all safety, environmental, health, and security regulations pertaining to the performance of the Work; and (iii) such other requirements as may be determined to be necessary for the successful performance of all related duties. The scope and content of Contractor's required quality assurance system shall be reviewed and approved annually by Company.

Contractor shall develop an environmental assurance program ("Environmental Assurance Program") and environmental assurance plan ("Environmental Assurance Plan") which conforms to the general content requirements of Exhibit Z and also incorporates the requirements of Exhibit K and Exhibit N. The Environmental Assurance Plan shall be customized to fully integrate all project-specific environmental requirements and demonstrate a compliance plan for such requirements, as well as the permit conditions/stipulations included or referenced in the Scope of Work and the conditions/stipulations of any permits to be secured by Contractor as part of the Work. The Environmental Assurance Plan shall be submitted to Company for review and comment and Contractor shall address any concerns provided by Company through revisions to the Environmental Assurance Plan. Contractor shall not proceed with any site clearing, grubbing, excavation, construction or other site work until the Environmental Assurance Plan has been reviewed by Company and all Company concerns have been addressed to Company's reasonable satisfaction.

Compliance with this Article in no way relieves Contractor of responsibility to furnish acceptable quality Work or Contractor-Furnished Materials as specified in this Contract.

ARTICLE 17. INSPECTION AND TESTING

All Work will be subject to inspection and testing at any reasonable time or times by Company, which shall have the right to reject nonconforming Work. Any inspection and testing performed by Company shall be performed solely for Company's benefit. Neither inspection and testing of Work nor the lack of same nor acceptance of the Work by Company nor payment therefore shall relieve Contractor from any of its obligations under this Contract. Contractor shall cooperate with any inspection and testing performed by Company.

If required for the Work, all equipment installation, testing and commissioning shall be performed in accordance with Exhibit O. The Contractor shall at all times, adhere to all the provisions described in Exhibit O unless otherwise agreed to in writing. The equipment specific installation procedures and forms referenced in Exhibit O are listed in the document Sub Equipment-Comprehensive List of Installation and Testing Documents. The specific breakdown of responsibilities for the various commissioning tasks are described in the Equipment Commissioning Summary document that is issued for each project. Contractor agrees to abide by commissioning Personnel qualification requirements as defined in Exhibit O, 1.7 in addition to

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all requirements of this Contract.

ARTICLE 18. CORRECTION OF WORK

Any time prior to final completion of any Work and acceptance by Company, Company may reject Work which fails to conform to this Contract and the applicable Release. Contractor, at its sole expense, shall: (i) promptly re-perform or replace or re-execute the Work so as to conform with the requirements of this Contract and the applicable Release; and (ii) remove from the Work Site all Work and Contractor-Furnished Materials rejected by Company, whether incorporated in the Work or not.

To the extent that Company incurs additional costs as the result of non-conforming Work, Contractor shall be responsible for such costs. Additional costs may include, without limitation, additional Company inspection personnel or extended inspection durations resulting from the nonconforming Work, the costs or any third party testing necessary to confirm the sufficiency of the non-conforming Work, and the costs or removing and restoring any facilities that must be disturbed to accommodate corrective actions.

If Contractor fails to promptly remedy rejected Work, Company may, without limiting or waiving any other rights or remedies it may have, correct the Work and remove and dispose of rejected Contractor-Furnished Materials at the expense of Contractor, and may deduct from amounts due Contractor any cost so incurred by Company.

ARTICLE 19. CHANGES

Company may at any time in writing direct additions, deletions or modifications to the Work set forth this Contract and any Release issued hereunder. If any such direction results in a material change in the amount or character of the Work, an equitable adjustment in the price and/or other such provisions as may be affected shall be made and this Contract or the applicable Release shall be modified in writing accordingly. Any claim by Contractor for an adjustment under this Article shall be processed in accordance with the provisions of ARTICLE 52, CLAIM NOTICE AND RESOLUTION PROCEDURE.

If possible, equitable adjustments to pricing shall be made in accordance with fixed price or unit price change orders as the Parties may agree. Company may direct the Contractor to proceed with a change in Work pending negotiation of the fixed price or unit prices change order rates by completing the unilateral directive portion of the Change Order Form. After issuance of the directive, and provided that Company and Contractor are unable to agree upon a negotiated fixed price or unit price adjustment to the pricing, Contractor shall be compensated in accordance with the time and expense rates set forth in Exhibit C.

No change shall be binding upon Company until a change order is executed by an authorized representative of Company which EXPRESSLY STATES THAT IT CONSTITUTES A CHANGE ORDER TO THIS CONTRACT. THE ISSUANCE OF INFORMATION, ADVICE, APPROVALS, OR INSTRUCTIONS BY ANYONE OTHER THAN THE AUTHORIZED COMPANY REPRESENTATIVE SHALL NOT CONSTITUTE AN AUTHORIZED CHANGE ORDER PURSUANT TO THIS ARTICLE. A CHANGE ORDER SHALL ONLY MODIFY THE RELEASE PURSUANT TO WHICH IT IS ISSUED AND CHANGES TO THE MASTER TERMS AND CONDITIONS OF THIS CONTRACT REQUIRE THE EXECUTION OF CONTRACT AMENDMENT BETWEEN THE PARTIES.

ARTICLE 20. WARRANTY

Contractor warrants that: (i) all Work performed shall conform to the Scope of Work, drawings, specifications, samples, industry standards and other descriptions or requirements set forth or incorporated by reference into the applicable Release and/or this Contract; (ii) all Work shall be free of defects in workmanship; and (iii) any Deliverables shall be free from defects; and (iv) Contractor-Furnished Materials shall be of the quality specified, or of the best grade if no quality is specified, and, unless otherwise provided in this Contract, will be new and free from defects in design.

At any time for a period of one (1) year from the date of final completion of the Work and acceptance by Company, Contractor shall at its own expense promptly repair, replace and/or re-perform any portion of the Work that is defective or in any way fails to conform to the Contract requirements. Contractor shall be responsible for all costs necessary to repair, replace and/or re-perform the non-conforming Work including all material, labor and transportation costs, and further including the costs necessary to obtain access to the non-conforming materials or equipment and any resulting damage to surrounding Work and/or adjacent property, equipment and facilities. If Contractor fails to promptly make any repair, replacement or re-performance as required herein, Company may conduct the necessary Work at Contractor's expense. Contractor cannot void the warranty for repair, replacement or re-performance performed under these circumstances. Provided that such repair, replacement or re-performance is conducted in a reasonable manner and with workmanship and care consistent with industry standards, Contractor shall reimburse Company for the cost of any warranty repair, replacement or re-performance self-performed by Company.

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If any Work, Contractor-Furnished Materials or Deliverables fail to meet the foregoing warranties, Company shall have the right to self-perform Emergency warranty work as Company deems necessary. Company agrees to notify Contractor of such Emergency work within forty-eight (48) hours. Contractor cannot void the warranty for any repairs, replacement or re-performance performed under these Emergency circumstances. Provided that the Emergency repairs, replacement or re-performance is performed in a reasonable manner and with workmanship and care measured by industry standards, Contractor shall reimburse Company for the cost of any Emergency warranty work self-performed by Company.

Any repair, replacement or re-performance will meet the requirements of this Contract for a period of one (1) additional year following Company's acceptance of such repair, replacement or re-performance.

The foregoing warranties are not intended as a limitation, but are in addition to all other express warranties set forth in this Contract and such other warranties as are implied by law, custom, and usage of trade.

ARTICLE 21. INSURANCE

Without limiting any liabilities or any other obligations of Contractor, Contractor shall, prior to commencing Work, secure and continuously carry with insurers having an A.M. Best Insurance Reports rating of A-:VII or better such insurance as will protect Contractor from liability and claims for injuries and damages which may arise out of or result from Contractor's operations under the Contract and for which Contractor may be legally liable, whether such operations are by Contractor or a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Contractor shall insure the risks associated with the Work and this Contract with minimum coverages and limits as set forth below:

Workers' Compensation. Contractor shall comply with all applicable Workers' Compensation Laws and shall furnish proof thereof satisfactory to Company prior to commencing Work. If Work is to be performed in Washington or Wyoming, Contractor will participate in the appropriate state fund(s) to cover all eligible employees and provide a stop gap (employer's liability) endorsement. Coverage should also comply with applicable federal regulations (including, without limitation, FELA, USL&H and the Jones Act).

Employers' Liability. Contractor shall maintain employers' liability insurance with a minimum single limit of \$1,000,000 each accident, \$1,000,000 disease each employee, and \$1,000,000 disease policy limit.

Commercial General Liability. Contractor shall maintain commercial general liability insurance on the most recently approved ISO policy form, or its equivalent, written on an occurrence basis, with limits not less than \$1,000,000 per occurrence/\$2,000,000 general aggregate (on a per location and/or per job basis) and shall include the following coverages:

- a. Premises and operations coverage
- b. Independent contractor's coverage
- c. Contractual liability
- d. Products and completed operations coverage, maintained for at least **2 years** for post-completion losses
- e. Coverage for explosion, collapse, and underground property damage
- f. Broad form property damage liability
- g. Personal and advertising injury liability, with the contractual exclusion removed
- h. Sudden and accidental pollution liability, as applicable

Business Automobile Liability. Contractor shall maintain business automobile liability insurance on the most recently approved ISO policy form, or its equivalent, with a minimum single limit of \$1,000,000 each accident for bodily injury and property damage including sudden and accidental pollution liability, with respect to Contractor's vehicles whether owned, hired or non-owned, assigned to or used in the performance of the Work. If applicable, the automobile liability policy will include pollution liability coverage equivalent to that provided under the ISO Pollution Liability Broadened Coverage for Covered Autos endorsement (CA9948) and Motor Carrier Act endorsement (MCS90) shall be attached.

Umbrella or Excess Liability. Contractor shall maintain umbrella or excess liability insurance with a minimum limit of \$5,000,000 each occurrence/aggregate where applicable on a following form basis to be excess of the insurance coverage and limits required in employers' liability insurance, commercial general liability insurance and business automobile liability insurance above. Contractor shall provide Notice to Company, if at any time the full umbrella limit required under this Contract is not available, and will purchase additional limits, if requested by Company.

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Transit and Installation. If required or specified in the applicable Release, Contractor shall maintain transit and installation insurance covering all worldwide air, land and water shipments, and installation of plant, equipment, machinery, components, supplies and materials, and shall include loading and unloading if Work is to be conducted by Contractor or any Subcontractor, and offsite storage, if applicable. Coverage shall attach at Contractor's point of shipment and continue until installed, constructed or rigged by Contractor or its Subcontractors in conjunction with this Work. Transit insurance shall be provided on an all risk basis to include direct physical loss or damage, including but not limited to loss caused by war, terrorism, strike, riot and civil commotion, and fabrication/repairs. Losses resulting from damage during transit shall be provided to cover full replacement cost of the plant, equipment, machinery, components, supplies and materials being shipped and provide valuation of not less than CIF plus 10%.

Installation insurance shall be provided on an all risk basis with normal and customary exclusions and will include coverage for mechanical breakdown, testing and commissioning and resulting damage to the Work from faulty design, workmanship and materials on a full replacement cost basis of this property while located at any one location at any one time, and shall protect against (i) loss of Company's personal property while such property is in the care, custody or control of Contractor or its Subcontractors, and (ii) damage to the particular portion of Company's real property on which Contractor or any Subcontractors are performing the Work if the property damage arises out of the performance of Work.

Deductibles shall not be greater than \$100,000 for any loss. Contractor shall have obtained such transit or installation coverage on or prior to the date on which the exposure to the risk arises. Company will be named loss payee or additional named insured for its interest in the covered property.

Company does not represent that the insurance coverages specified herein (whether in scope of coverage or amounts of coverage) are adequate to protect the obligations of Contractor, and Contractor shall be solely responsible for any deficiencies thereof.

Except for workers' compensation, the policies required herein shall include provisions or endorsements naming Company, its parent, divisions, affiliates, subsidiary companies, co-lessees, co-venturers, officers, directors, agents, employees, servants and insurers as additional insureds or loss payees, as applicable to specific insurance coverage. The commercial general liability additional insured endorsement shall be ISO Form CG 20 10 and ISO Form CG 20 37, or their equivalents.

To the extent of Contractor's negligent acts or omissions, all policies required by this Contract shall include: (i) provisions that such insurance is primary insurance with respect to the interests of Company and that any other insurance maintained by Company (including self-insurance) is excess and not contributory insurance with the insurance required hereunder; (ii) provisions that the policy contain a cross liability or severability of interest clause or endorsement in the commercial general liability and automobile liability coverage; and (iii) provisions that such policies not be canceled or their limits of liability reduced without: (a) ten (10) calendar days prior written Notice to Company if canceled for nonpayment of premium; or (b) thirty (30) calendar days prior written Notice to Company if canceled for any other reason. Unless prohibited by applicable law, all required insurance policies shall contain provisions that the insurer will have no right of recovery or subrogation against Company, its parent, divisions, affiliates, subsidiary companies, co-lessees or co-venturers, agents, directors, officers, employees, servants, and insurers, it being the intention of the Parties that the insurance as effected shall protect all of the above-referenced entities evidenced by waiver of subrogation wording.

A certificate of insurance shall be furnished to Company through ISNetworld confirming the issuance of such insurance prior to commencement of Work by Contractor. Should a loss arise during the Term of the Contract that may give rise to a claim against Contractor and/or Company as an additional insured, Contractor shall deliver to Company (or cause to be delivered to Company) certified copies of such insurance policies. Contractor shall not cancel or reduce limits of liability without (i) ten (10) calendar days prior written Notice to Company if canceled for nonpayment of premium; or (ii) thirty (30) calendar days prior written Notice to Company if canceled for any other reason. Lack of notification shall be considered a material breach of this Contract.

Contractor shall require Subcontractors who perform Work at the Work Site to carry liability insurance (auto, commercial general liability and excess) and workers' compensation/employer's liability insurance commensurate with their respective scopes of work. Contractor shall remain responsible for any claims, lawsuits, losses and expenses included defense costs that exceed any of its Subcontractors' insurance limits or for uninsured claims or losses.

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ARTICLE 22. INDEMNIFICATION

Contractor specifically and expressly agrees to indemnify, defend, and hold harmless Company and its officers, directors, employees and agents (hereinafter collectively "Indemnitees") against and from any and all claims, demands, suits, losses, costs and damages, including attorneys' fees and/or litigation expenses, brought or made against or incurred by any of the Indemnitees arising out of death or bodily injury to persons or damage to property to the extent that the death or bodily injury to persons or damage to property arises out of the fault of Contractor or the fault of Contractor's agents, representatives or Subcontractors of any tier, their employees, agents or representatives in the performance or nonperformance of Contractor's obligations under this Contract or in any way related to this Contract. The indemnity obligations under this Article shall include without limitation:

- a. Loss of or damage to any property of Company, Contractor or any third party;
- b. Bodily injury to, or death of any person(s), including without limitation employees of Company, or of Contractor or its Subcontractors of any tier; and
- c. Claims arising out of workers' compensation, unemployment compensation, or similar such laws or obligations applicable to employees of Contractor or its Subcontractors of any tier.

Contractor's indemnity obligations owing to Indemnitees under this Article are not limited by any applicable insurance coverage identified in ARTICLE 21, INSURANCE. Contractor's indemnity obligation under this Article shall not extend to any liability caused by the negligence of any of the Indemnitees.

For Work performed in the States of Oregon and Washington, and to the limited extent that this Contract requires Contractor to perform Work meeting the statutory definition of "construction" in either of the above-referenced states, Contractor's indemnity obligations under this Article shall extend only to liability for damage arising out of death or bodily injury to persons or damage to property to the extent that the death or bodily injury to persons or damage to property arises out of the fault of Contractor, or the fault of Contractor's agents, representatives or Subcontractors.

To the extent applicable, Contractor specifically and expressly waives any immunity under either Industrial Insurance, Title 51, RCW, or Workers' Compensation Law, Chapter 656, ORS, and acknowledges that this waiver was mutually negotiated by the Parties herein.

The invalidity, in whole or in part, of any of the foregoing paragraphs will not affect the remainder of such paragraph or any other paragraphs in this Article.

ARTICLE 23. ACCESS TO COMPANY'S FACILITIES

23.1 Requirements for Unescorted Personnel and Sensitive Personnel

Access to Company controlled areas is granted on an as-needed basis only in accordance with Company's internal badge and access policy. Additionally, Company is required to comply with certain of NERC's federally mandated Critical Infrastructure Protection Standards (CIPS) adopted to ensure that electric utilities, as part of the nation's critical infrastructure, are able to sustain and secure against vulnerabilities that may threaten the bulk electric system and the utilities that operate it. Company shall specify in the Release or Scope of Work whether or not the Work under this Contract requires either: (i) authorized unescorted physical access to Company's Facilities (*i.e.*, use of Unescorted Personnel); or (ii) authorized unescorted physical access or authorized cyber access to Company's CIPS Covered Assets (*i.e.*, use of Sensitive Personnel). For all Personnel who require either such access, Contractor shall:

- a. Conduct, at Contractor's cost and expense, a Personnel risk assessment to include at a minimum an identity verification and seven-year criminal background check for the current residence and past locations of residence of all Unescorted Personnel and Sensitive Personnel. All background checks will be conducted in accordance with federal, state, provincial and local laws, and subject to existing collective bargaining unit agreements or other agreements, if any. A background check completed within two (2) years prior to the date the Contractor signed a Contractor/Vendor Information Form for each such person will be considered valid. Following the initial background check, updates shall be performed no less frequently than every seven (7) years or upon request by Company. In the event Company notifies Contractor of impending expiration of the background check of any Unescorted Personnel or Sensitive Personnel, Contractor shall provide an updated Contractor/Vendor Information Form reflecting a refreshed background check within twenty (20) days of receipt of the Notice in order to avoid revocation of such person's access. An appropriate authorization form must be signed by each of the Unescorted Personnel and Sensitive Personnel prior to a background check being conducted,

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acknowledging that the background check is being conducted and authorizing the information obtained to be provided to Company;

- b. Ensure that Unescorted Personnel and Sensitive Personnel have passed the background checks outlined in subsection 23.1(a) prior to requesting unescorted physical access and/or cyber access to Company's Facilities and/or CIPS Covered Assets, as applicable. In the event any such person: (i) is currently under indictment for a crime punishable by imprisonment for a term exceeding one year; (ii) has been convicted (within the past seven years) in any court of a crime punishable by imprisonment for a term exceeding one year; (iii) is currently a fugitive of justice; or (iv) is an alien illegally or unlawfully in the United States, such person shall be considered a "restricted person" and may not be Unescorted Personnel or Sensitive Personnel without prior written consent from Company. In the event any such person's background check reveals any residency gap of six (6) consecutive months or more, Contractor shall review, evaluate, and document any such residency gap to ensure that it does not pose a risk to Company's CIPS Covered Assets, prior to making a determination that Unescorted Personnel and Sensitive Personnel have passed the background check;
- c. Ensure that Unescorted Personnel and Sensitive Personnel complete Company provided or approved initial CIPS and Standards of Conduct compliance training prior to requesting unescorted physical access and/or cyber access to Company's Facilities and/or CIPS Covered Assets, as applicable;
- d. Ensure that Unescorted Personnel and Sensitive Personnel have passed Contractor's drug and alcohol exam and are in compliance with Contractor's substance abuse/drug and alcohol policy as outlined in ARTICLE 24, SUBSTANCE ABUSE; DRUG AND ALCOHOL POLICY; and
- e. Keep accurate and detailed documentation to confirm completion dates for background checks and all CIPS and Standards of Conduct compliance training (initial and annual training, to the extent applicable), and certify to Company such documentation by completing a Contractor/Vendor Information Form, attached as Exhibit R, hereto, for each Unescorted Personnel or Sensitive Personnel. Company has the right to audit Contractor's records supporting each Contractor/Vendor Information Form submitted to Company and to verify that the requisite background checks and CIPS and Standards of Conduct compliance training were performed. Contractor shall provide Company with all requested records supporting Contractor/Vendor Information forms within a reasonable time after receiving such a request, and in the form requested by Company, but not longer than three (3) business days following the date of such request.

Contractor shall not allow any Unescorted Personnel or Sensitive Personnel who have not met the foregoing requirements of this subsection 23.1 to perform Work, unless Contractor has received prior written consent from Company.

23.2 Additional Access Requirements Specific to Sensitive Personnel

In addition to the access requirements outlined in subsection 23.1, with respect to all Sensitive Personnel, Contractor also shall:

- a. Ensure that Sensitive Personnel (and any Personnel with access to BCSI) are informed of and comply with Company's BCSI requirements contained in any confidentiality agreement previously executed by Contractor as well as the BCSI requirements set forth herein in ARTICLE 67, CONFIDENTIAL INFORMATION; NONDISCLOSURE;
- b. In addition to the initial CIPS and Standards of Conduct compliance training requirement outlined in subsection 23.1(c), ensure that Sensitive Personnel complete annual Company provided or approved CIPS compliance training within Company's prescribed training window; and
- c. Immediately upon either (i) Sensitive Personnel termination actions or (ii) all other changes in the status of Sensitive Personnel who no longer require access, report such termination or change in status to the Company's Enterprise Service Desk (ESD). The ESD is available 24 hours a day by calling either (503) 813-5555 or (801) 220-5555.

Contractor shall not allow any Sensitive Personnel who have not met the foregoing requirements of this subsection 23.2 to perform Work, unless Contractor has received prior written consent from Company.

ARTICLE 24. SUBSTANCE ABUSE; DRUG AND ALCOHOL POLICY

- a. Contractor shall have in place and ensure that all Personnel comply with a substance abuse and drug and alcohol policy that meets or exceeds the requirements of all applicable federal, state and/or local statutes and regulations. Contractor shall subject each of the Personnel to a drug test at Contractor's sole cost and expense. Such drug test shall, at a minimum, be a nine (9) Panel Drug Test, which should be recognizable at testing labs as a "SamHSA9 panel at 50NG – THC cut-off."

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- b. For any Personnel who have had a recent drug test, such recent drug test shall be documented pursuant to the previous paragraph. Contractor warrants that Contractor and the Personnel are in compliance with Contractor's substance abuse and drug and alcohol policy.
- c. During the course of Work performed under this Contract, Contractor shall keep accurate and detailed documentation of its drug policy and Personnel drug tests, which it shall submit to Company upon request.
- d. Contractor shall designate one (1) person to be responsible for compliance with the requirements of this Article and all reporting and inquiries shall be made to a duly authorized representative of Company in a timely manner.

ARTICLE 25. CONTRACTOR'S PERSONNEL; DRUGS, ALCOHOL AND FIREARMS

Contractor shall employ in the performance of the Work only persons qualified for the same. Contractor shall at all times enforce strict discipline and good order among its employees and the employees of any Subcontractor of any tier. Contractor shall not permit or allow the introduction or use of any firearms, illegal drugs or intoxicating liquor upon the Work under this Contract, or upon any of the grounds occupied, controlled, or used by Contractor in the performance of the Work. Contractor shall immediately remove from the Work, whenever requested by Company, any person considered by Company to be incompetent, insubordinate, careless, disorderly, in violation of the above restriction on firearms, illegal drugs or intoxicating liquor, or under the influence of illegal drugs or intoxicating liquor, and such person shall not again be employed in the performance of the Work herein without the consent of Company.

ARTICLE 26. DEPARTMENT OF TRANSPORTATION

Contractor shall ensure Department of Transportation compliance including, but not limited to, valid driver's license, equipment inspections, hours of service and all appropriate documentation for any Personnel who may drive in the performance of Contractor's obligations under this Contract. Company may, at its discretion, check Personnel at the Work for a valid driver's license.

ARTICLE 27. BUSINESS ETHICS

Contractor, its employees, officers, agents, representatives and Subcontractors shall at all times maintain the highest ethical standards and avoid conflicts of interest in the performance of Contractor's obligations under this Contract. In conjunction with its performance of the Work, Contractor and its employees, officers, agents and representatives shall comply with, and cause its Subcontractors and their respective employees, officers, agents and representatives to comply with, all applicable laws, statutes, regulations and other requirements prohibiting bribery, corruption, kick-backs or similar unethical practices including, without limitation, the United States Foreign Corrupt Practices Act, the United Kingdom Bribery Act 2010, and the Company Code of Business Conduct. Without limiting the generality of the foregoing, Contractor specifically represents and warrants that neither Contractor nor any Subcontractor employees, officers, representatives or other agents of Contractor have made or will make any payment, or have given or will give anything of value, in either case to any government official (including any officer or employee of any governmental authority) to influence his, her, or its decision or to gain any other advantage for Company or Contractor in connection with the Work to be performed hereunder. Contractor shall maintain and cause to be maintained effective accounting procedures and internal controls necessary to record all expenditures in connection with this Contract and to verify Contractor's compliance with this Article. Company shall be permitted to audit such records as reasonably necessary to confirm Contractor's compliance with this Article. Contractor shall immediately provide Notice to Company of any facts, circumstances or allegations that constitute or might constitute a breach of this Article and shall cooperate with Company's subsequent investigation of such matters. Contractor shall indemnify and hold Company harmless from all fines, penalties, expenses or other losses sustained by Company as a result of Contractor's breach of this provision. The Parties specifically acknowledge that Contractor's failure to comply with the requirements of this Article shall constitute a condition of default under this Contract.

ARTICLE 28. RISK OF LOSS

Contractor assumes risk of loss and full responsibility for the cost of replacing any Contractor-Furnished Materials and Company-Furnished Materials (including any insurance deductibles and uninsured losses) while under the care, custody and control of Contractor. This provision shall apply regardless of whether Company holds legal title to such materials. This provision shall not apply to the extent such loss or damage is a result of the negligence or intentional misconduct of Company or Company's agents.

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ARTICLE 29. LABOR

Contractor shall be aware of, and familiar with, all collective bargaining agreements, where applicable, which do or may pertain to or affect the Work under this Contract or other work at the Work Site. Contractor shall plan and conduct its operations so that its employees and Subcontractors of any tier will work harmoniously with Company employees and other workers employed on the same or related projects to ensure that there will be no delays, work stoppages, excessive labor costs, or other labor difficulties.

ARTICLE 30. CONTRACTOR-FURNISHED MATERIALS

Contractor shall provide Company for its approval the names of the manufacturer(s) of all Contractor-Furnished Materials which Contractor contemplates incorporating in the Work, together with their performance capacities and other pertinent information upon request. Where Contractor-Furnished Materials are referred to in the Scope of Work or General PacifiCorp Work Requirements as "equal to" any particular standard, Company shall decide the question of equality. Contractor-Furnished Materials installed or used without Company's approval shall be at the risk of subsequent rejection. Samples of Contractor-Furnished Materials shall be submitted for approval when so directed.

ARTICLE 31. COMPANY-FURNISHED MATERIALS

Contractor shall be required to accept delivery of Company-Furnished Materials as described in the Scope of Work and to deliver them to the Work Site.

Contractor shall be required to execute a receipt for all items received from Company. Execution of a receipt without reservation incorporated therein shall bar a subsequent claim by Contractor that materials were received from Company in a damaged condition. Upon receipt by Contractor of Company-Furnished Materials, Contractor shall become solely responsible for their care and protection. In the event any materials are damaged, lost, stolen or destroyed, by reason of any cause, whether within or beyond the control of Contractor, the materials shall be repaired or replaced entirely and solely at Contractor's expense. The materials required to be replaced may be furnished by Company at its sole option. Contractor will be charged the amount the materials cost Company at place of delivery to Contractor. Contractor shall return to Company's facility all unused Company-Furnished Materials, along with a complete inventory of all materials returned. All returned materials shall be boxed or bundled in a manner acceptable to Company and neatly stacked in the facility as directed by Company.

Contractor shall notify Company forty-eight (48) hours prior to arriving at Company's facility before taking delivery of Company-Furnished Materials.

The Company project manager or other on-site Company project supervisory personnel (hereinafter, Company Supervisor) may require identification of persons entering or leaving Company sites or project sites. Company may also require searches of vehicles entering or leaving its sites or project sites. Company-owned project materials may only be removed from project sites with prior express written approval from the Company Supervisor.

Contractor shall each day provide the Company Supervisor the number of Personnel working on the project and when, where, and what work will occur.

ARTICLE 32. TEMPORARY CONSTRUCTION FACILITIES AND UTILITIES

Except as otherwise specifically provided in a Release, Contractor shall be required to provide, at its expense, all temporary facilities and utilities that may be necessary for the performance of the Work under this Contract. This includes temporary storage or office space as Contractor may require. The installation and maintenance of all temporary facilities and utilities shall be subject to the approval of Company, and unless authorized in writing by Company, all such facilities shall be removed from the Work Site at the completion of the Work. In the event Contractor provides space suitable for office or storage, a portion of such space if requested shall be made available for Company's representative.

ARTICLE 33. REVIEW OF DELIVERABLES

Review by Company of any Deliverables submitted by Contractor is only to determine the general conformance with the design concepts and shall not relieve Contractor of its responsibility to comply with all requirements of the Contract and for the accuracy of the Deliverables or the materials fabricated from such Deliverables.

The Contractor shall maintain at the Work Site, a copy of the drawings and specifications kept current with all changes and modifications, shall at all times give Company access and shall deliver a copy to Company upon request or upon termination or completion of the Work.

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Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be considered as if shown or mentioned in both. In case of a difference between drawings and specifications, a discrepancy in figures or any other discrepancy or conflict in Contract documents, the matter shall be promptly submitted to Company, which shall promptly issue a determination in writing. Any interpretation by Contractor without this determination shall be at Contractor's own risk and expense.

ARTICLE 34. ALLOCATION

Notwithstanding any other provision of this Contract, in the event of a partial or total failure of Contractor's sources of supply, including but not limited to failures arising from or related to storms, natural disasters or other occurrences that require emergency restoration of Company's services anywhere in Company's service area, Contractor will first meet all of Company's requirements hereunder prior to any allocation among other customers. In such event, the requirements of the Company shall be the first priority of Contractor. Contractor shall utilize all available resources of manpower and equipment at its disposal in order to meet Company's requirements hereunder in order to assist with such restoration, and shall not divert any of its available resources to other work until such services have been fully and completely restored, as determined by Company in its sole discretion, or until otherwise directed by Company.

ARTICLE 35. SITE REGULATIONS

Contractor, while performing Work at the Work Site, shall make itself aware of and adhere to Company Work Site regulations, if any, including without limitation environmental protection, loss control, dust control, safety, and security including, but not limited to, the provisions outlined in Exhibit K (including incident reporting and violation reporting forms contained therein).

ARTICLE 36. HEALTH, SAFETY AND ENVIRONMENTAL; INCIDENT, ACCIDENT AND DAMAGE PREVENTION

Contractor shall be solely responsible for being aware of and initiating, maintaining and supervising compliance with Exhibit K and with all health, safety and environmental laws, regulations, precautions, and programs in connection with the performance of the Contract. Prior to the start of any Work required by this Contract, Contractor shall ensure that each of its own employees, together with all employees of its Subcontractors of any tier, are fully informed concerning all health, safety, environmental and security regulations pertaining to their Work. Any project specific environmental requirements, beyond those stated herein under the terms of this Contract and associated exhibits, will be identified and detailed in the project scope and bid package and applicable Release. In the event any requirements are omitted, it does not relieve the contractor from complying with applicable environmental laws and regulations.

Contractor shall conduct all Work in such a manner as to avoid the risk of bodily harm to persons including the public or risk of damage to any property and the environment.

Contractor shall maintain an accurate record of and shall promptly report to Company all cases of property damage in excess of \$100 and of death, environmental breaches, occupational diseases, or injury to employees or any other third parties and incident to performance of Work under this Contract. Contractor shall promptly notify Company and provide a copy of any citation issued by any governmental entity.

Contractor and its Subcontractors shall maintain accurate and current safety and environmental records consistent with industry practice during the performance of Work under this Contract. Contractor and its Subcontractors shall immediately, and in no event more than twenty-four (24) hours, report to Company all cases of death or injury to Contractor or Subcontractor employees or any other third parties during or related to the performance of Work under this Contract. Contractor shall provide such notice to the Company project manager and PacifiCorp Grid Operations (800-732-8728), which notification shall include, but is not limited to, notice of all vehicle accidents, electrical contacts, electrical flashes, OSHA recordable incidents and environmental incidents. Within forty-eight (48) hours of any safety incident reported to Company, Contractor shall provide Company project manager with a preliminary accident investigation report detailing the facts of the incident, any known root cause, and action steps being taken by Contractor to further investigate the incident and mitigate future occurrences.

In the event Contractor fails to promptly correct any violation of health, safety or environmental regulations, Company may suspend all or any part of the Work. Contractor shall not be entitled to any extension of time or reimbursement for costs caused by any such suspension order. Failure of Company to order discontinuance of any or all of Contractor's operations shall not relieve Contractor of its responsibility for the safety of personnel and property.

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Contractor shall perform regular safety training sessions on not less than an annual basis for all personnel involved in the performance of Work covered by this Contract. Personnel who have not successfully completed the required annual safety training shall not be employed in the performance of Work covered by this Contract.

As a condition to the continued receipt of Releases under this Contract, Contractor must maintain its subscription with Company's third-party safety and loss information reporting service.

ARTICLE 37. HAZARDOUS MATERIALS

Contractor shall comply with, and cause all Subcontractors to comply with, all applicable statutes, laws, rules, regulations, codes, ordinances, decrees, writs, orders or similar requirements concerning Hazardous Materials. Without limiting the generality of the foregoing provision, Contractor shall comply with the following sections of Company's hazard communication program:

- a. Safety Data Sheets ("SDS") for all Hazardous Materials that Contractor or its Subcontractors plan to bring to the Work Site shall be made readily available for review by Company's manager, applicable safety coordinator or industrial hygienist. Contractor or its Subcontractors shall notify Company of potential exposure to Hazardous Materials to be used by Contractor or its Subcontractors if Company employees are present at the Work Site.
- b. Contractor shall furnish SDS and appropriate labels with all Hazardous Materials brought to the Work Site. All Hazardous Materials will be contained so as to meet applicable legal requirements.
- c. Contractor will cause all of its employees, and the employees of its Subcontractors, to review the SDS of Hazardous Materials and to follow the requirements of the OSHA Hazard Communication Standard.

Contractor is responsible for all applicable training and adherence to the OSHA Hazard Communication Standard and SARA Title III, Emergency Planning and Community Right-to-know Act (EPCRA) rules by their Personnel.

Contractor shall be solely responsible for all losses arising from Hazardous Materials brought to the Work Site by Contractor or its Subcontractors during the performance of the Work, including the storage, transportation, processing and disposal of Hazardous Materials. Contractor shall be solely responsible for all losses related to the Hazardous Materials brought to the Work Site by Contractor or its Subcontractors including, without limitation: (i) the remediation of any environmental condition caused by such Hazardous Materials, and (ii) any fines or penalties imposed by any governmental authority having or asserting jurisdiction with respect to the Hazardous Materials or Work. Contractor shall be solely responsible for the removal of all Hazardous Materials rough to the Work Site by Contractor or its Subcontractors.

ARTICLE 38. PROTECTION OF EXISTING FACILITIES

Contractor shall protect existing equipment and facilities, and avoid interference with Company's operations. Contractor shall not remove or alter any part of the existing structures, equipment or facilities without the prior knowledge and consent of Company.

In the event that it becomes necessary to interrupt or impose abnormal operating conditions upon any of the systems, notification must be submitted by Contractor well in advance of the time scheduled and a complete agreement must be reached with Company as to the definite date, time of day, length of time required, and specific details of the interruption.

ARTICLE 39. PRESERVATION OF PUBLIC/PRIVATE ACCESS

Contractor shall not damage, close, or obstruct any highway, road, or other public or private easement, except to the extent allowed by permits. If such facilities are closed, obstructed, damaged, or made unsafe by Contractor, Contractor shall, at its sole expense, make such repair as necessary and shall also provide such temporary guards, lights, and other signals as necessary or required for safety or as reasonably requested by Company. Contractor shall comply with all traffic control best practices and laws.

ARTICLE 40. DISTRIBUTION AND TRANSMISSION FACILITIES ACCESS

Access to the distribution and transmission facilities wherever possible will be from intersecting or adjacent public streets and roads. In the event access to Company right-of-way requires access across private property, such access shall be arranged and documented by the Contractor with the property owner in advance of accessing the right-of-way. Permission from the property owner to traverse private property shall be documented, and such documentation shall be retained by the Contractor. Contractor shall be solely responsible for the use and occupancy of any private lands crossed or otherwise occupied by it in securing additional access to the Company right-of-way across private property from public streets or roads.

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The easement or right-of-way for the distribution and transmission system facilities may cross grazing lands or cultivated areas, and Contractor shall take all necessary precautions to prevent damage to such lands and areas. Gates shall be kept at all times in the position encountered except when required to be opened for the immediate passage of personnel and equipment. A closed gate shall be kept in the closed position, and an open gate shall be kept in the open position. The position of the gate shall be documented and such documentation shall be retained by the Contractor. Contractor shall confine traffic to roads and lanes as may exist on the easement or right-of-way and shall maintain any such roads as are used by it and leave them in good condition on completion of the Work.

ARTICLE 41. SURVEYING

Contractor is responsible for performing all construction layout surveying required for execution of the Work.

Contractor shall be held responsible for preserving all established project control monuments unless their removal is requested by Contractor and authorized in writing by Company. Any costs incurred by Company to reestablish control monuments destroyed by Contractor will be for Contractor's account.

ARTICLE 42. PROGRESS MEETINGS

Company will conduct meetings at regular intervals agreed by the Parties, with Contractor to inspect facilities and discuss any unusual conditions or critical items which have affected or could affect the Work.

In addition, a joint Company and Contractor business process and performance review team will be established within thirty (30) calendar days of the date of execution of the Contract. This team will consist of a Company management representative with Contract management responsibility, a Company sourcing representative with Contract management responsibility, and a Contractor management representative with decision making and implementation authority for all areas of Contractor activity. This group will meet as needed at Company or Contractor discretion to discuss outstanding business process and performance issues. Any change in the general operational direction of Company or Contractor activity, forecast of Company resource needs, or other future considerations shall be periodically reviewed and discussed by this group.

ARTICLE 43. SUPERINTENDENCE BY CONTRACTOR

Contractor shall have competent supervisory Personnel satisfactory to Company and with authority to act for Contractor present at the Work Site at all times the Work is in progress.

Contractor will work with the Company's designated representative in coordinating and performing its Work. Failure of Contractor to do so shall be considered a default under this Contract. However, in no event shall the Company's designated representative have direction over means and methods used by Contractor in performance of the Work.

ARTICLE 44. USE OF PREMISES AND TRESPASS

Contractor shall confine the storage of materials and construction equipment to locations acceptable to Company and in accordance with all applicable ordinances, regulations, or laws. Contractor shall provide adequate safety barriers, signs, lanterns, and other warning devices and services to properly protect any person having access to or near the Work Site. Contractor shall be solely responsible for any act of trespass or any damage to adjacent property resulting from or in connection with its operations under this Contract.

Contractor agrees to abide by Company's Exhibit K, Part 9. No individuals, whether employees, Contractor, vendors, visitors or guests, are allowed to smoke or use tobacco products on the premises of any Company facility or property, whether owned or leased. This prohibition includes offices, field facilities, company vehicles and aircraft, garages, parking lots, lawns and sidewalks.

ARTICLE 45. UNDERGROUND OBSTACLES

Contractor shall be responsible for ascertaining the location of and avoiding damage to all underground installations including without limitation cable, gas, water pipes, telephone lines, and other underground installations, whether the location of the excavation, digging, or trenching required for performance of the Work is fixed by Company or by Contractor. Contractor shall comply with Blue Stake or One Call laws.

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ARTICLE 46. COOPERATION WITH OTHERS

Contractor shall fully cooperate and coordinate with Company employees and other contractors who may be awarded other work. Contractor shall not commit or permit any act, which will interfere with the performance of work by Company employees or other contractors.

ARTICLE 47. CLEANUP

Contractor shall keep each Work Site, including storage areas used by it, free from accumulation of waste materials or rubbish arising out of the Work, and prior to completion of the Work, shall remove and properly dispose of any such rubbish from and about the Work Site, as well as remove all tools and equipment not property of Company. Upon completion of the Work, Contractor shall leave each Work Site in a condition satisfactory to Company. In the event of Contractor's failure within a reasonable time to comply with any of the foregoing, Company may, after written Notice to Contractor of such failure, perform the cleanup and removal at the expense of Contractor. Contractor shall be responsible for the management and disposal of wood waste generated at the Work Site as set forth in the attached Exhibit N.

ARTICLE 48. LIENS

Contractor shall: (i) indemnify, defend, and hold harmless Company from all laborers', materialmen's and mechanics' liens or claims made or filed against Company or upon the Work or the property on which the Work is located on account of any labor performed or labor, services, and Contractor-Furnished Materials provided by Subcontractors of any tier; and (ii) keep the Work and said property free and clear of all liens or claims arising from the performance of any Work covered by this Contract by Contractor, its Subcontractors of any tier.

If any lien arising out of this Contract is filed, before or after Work is completed, Contractor, within ten (10) calendar days after receiving from Company written Notice of such lien, shall obtain release of or otherwise satisfy such lien. If Contractor fails to do so, Company may take such steps and make such expenditures as in its discretion it deems advisable to obtain release of or otherwise satisfy any such lien or liens, and Contractor shall upon demand reimburse Company for all costs incurred and expenditures made by Company in obtaining such release or satisfaction. If any non-payment claim is made directly against Company arising out of non-payment to any Subcontractor, Contractor shall assume the defense of such claim within ten (10) calendar days after receiving from Company written Notice of such claim. If Contractor fails to do so, Contractor shall upon demand reimburse Company for all costs incurred and expenditures made by Company to satisfy such claim.

Contractor's obligation to indemnify, defend and hold harmless Company from liens and claims shall not in any way be rendered unenforceable, or altered, amended, eliminated or otherwise conditioned by any laws and regulations related to processing such liens. Company shall have no obligation to deliver a copy of any notice of claim or right to a lien to Contractor or any other person or entity.

ARTICLE 49. CONFLICTS, ERRORS, OMISSIONS, OR DISCREPANCIES IN CONTRACT DOCUMENTS

Contractor shall advise Company in writing of all conflicts, errors, omissions, or discrepancies among the various documents comprising this Contract immediately upon discovery and prior to Contractor's performing the affected Work. Company shall resolve such conflicts and such resolution shall be final. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be considered as if shown or mentioned in both.

ARTICLE 50. LIQUIDATED DAMAGES

The amount of liquidated damages shall be specified within each project bid package and imposed in its corresponding Release.

If Contractor fails to perform the Work in accordance with the Project Guaranteed Dates specified in a Release, Company will incur some degree of damages. The Parties expressly acknowledge and agree that it would be difficult or impossible to determine with absolute precision the amount of damages that would be incurred by Company as a result of Contractor's failure to perform the Work in accordance with the Project Guaranteed Dates. The Parties accordingly agree, having taken into account all factors that they deem appropriate, including all of the respective rights and obligations under this Contract, that liquidated damages are in lieu of actual damages and are the Parties' reasonable estimate of fair compensation for the losses that are reasonably anticipated to be incurred by Company from Contractor's failure to timely perform in accordance with the Contract, and do not constitute a penalty. The payment of liquidated damages (and, to the extent applicable, termination of the Contract and/or Release by Company for default in accordance with the terms hereof) shall be Contractor's

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sole and exclusive obligations and Company's sole and exclusive remedy with respect to the failure to timely perform in accordance with the Project Guaranteed Dates set forth in the specified Release. The sole and exclusive remedy provision set forth in this Article applies only to delay claims and not to any other damage claims Company may have under this Contract.

In the event that the provisions for the payment of liquidated damages as specified in a Release are held to be unenforceable as a matter of law, Contractor shall be liable for all actual damages that may be available at law for late delivery, including loss of profit or income, loss of use, loss or production, loss of contracts, incidental damages and consequential damages, but subject to the maximum amounts which would have been payable if the liquidated damages provision had been enforceable.

WITH THE EXCEPTION OF CONSEQUENTIAL DAMAGES THAT ARE PERMITTED PURSUANT TO THE SECOND PARAGRAPH OF THIS ARTICLE IN THE EVENT THAT LIQUIDATED DAMAGES ARE HELD TO BE UNENFORCEABLE AS A MATTER OF LAW, THE PARTIES WAIVE CLAIMS AGAINST EACH OTHER FOR CONSEQUENTIAL DAMAGES ARISING UNDER OR RELATING TO THIS CONTRACT.

ARTICLE 51. PAYMENT BONDS

At Company's sole option to be exercised by the time of execution of a Release in accordance with this Contract, Contractor shall furnish a Labor and Material Payment Bond with the penal sum of one-hundred (100) percent of the Release price. The bond shall be issued concurrently with the execution of the Release and shall cover full and faithful performance of all conditions and provisions hereunder, including the payment of all materials and labor incurred by Contractor in the performance of the Release, including changed Work as provided in ARTICLE 19, CHANGES. Said bond shall be issued on a form acceptable to Company.

ARTICLE 52. CLAIM NOTICE AND RESOLUTION PROCEDURE

In the event Contractor has a claim or request for a time extension, additional compensation, any other adjustment of the Contract terms, (in which event notice will be provided on the form included as Exhibit W), Contractor shall provide Company with Notice of such Claim within five (5) business days following the occurrence of the event giving rise to the Claim. Contractor's failure to give Notice as required will constitute a waiver of all of Contractor's rights with respect to the Claim.

As soon as practicable after Claim notification, Contractor shall submit the Claim to Company with all supporting information and documentation. Contractor shall also respond promptly to all Company inquiries about the Claim and its basis.

Any Claim that is not disposed of by mutual agreement between the Parties shall be decided by Company, which shall provide a written decision to Contractor. Such decision shall be final unless Contractor, within thirty (30) calendar days after such receipt of Company's decision, provides to Company a written protest, stating clearly and in detail the basis thereof. Contractor's failure to protest Company's decision within that time period shall constitute a waiver by Contractor of its right to dispute the decision. Even if a Claim arises, Contractor shall continue its performance of this Contract.

ARTICLE 53. SUSPENSION OF WORK

Company may, by written Notice, direct Contractor to suspend performance of any or all of the Work for a specified period of time. Upon receipt of such Notice to suspend, Contractor shall: (i) discontinue the applicable Work; (ii) place no further orders or subcontracts with respect to the suspended Work; (iii) suspend all orders and subcontracts with respect to the suspended Work; (iv) protect and maintain the suspended Work; and (v) otherwise mitigate Company's costs and liabilities for those areas of Work suspended. Company shall pay Contractor an equitable amount for incremental costs incurred by Contractor as a result of the suspension; provided, however, that if the suspension is due to Contractor's failure to comply with the Contract, no such payment shall be made.

ARTICLE 54. TERMINATION FOR CONVENIENCE

Company may terminate this Contract in whole or in part at any time without cause prior to its completion by sending to Contractor written Notice of such termination. Upon such termination, Company shall pay to Contractor, in full satisfaction and discharge of all liabilities and obligations owed Contractor, an equitable amount for all Work satisfactorily performed by Contractor as of the date of termination, plus an equitable termination fee to address Subcontractor termination charges and other out-of-pocket costs incurred by Contractor as the result of the termination provided that such costs cannot be reasonably mitigated. Company shall not be liable for anticipated profits based upon Work not yet performed.

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ARTICLE 55. TERMINATION FOR CAUSE

1. For purposes of this Contract, a default by Contractor shall be the occurrence of any of the following:
 - a. A breach by Contractor of any of its material obligations under the Contract, if such breach continues uncured for a period of seven (7) days after receipt of Notice from Company, unless Company agrees, in writing, to grant Contractor an extension of such seven (7) day period for a period of time to be determined at Company's sole discretion. In such circumstance, Company shall prescribe the new cure period in writing. For purposes of the Contract, a default by Contractor shall be deemed to include, without limitation, Contractor's refusal or neglect to supply sufficient and properly skilled Personnel, materials or Deliverables of the proper quality or quantity, or equipment necessary to perform the Work described in the Contract properly, or Contractor's failure in any respect to prosecute the Work described in the Contract or any part thereof with promptness, diligence and in accordance with all of the material provisions hereof;
 - b. Contractor fails in any material respect to comply with any laws, ordinances or regulations pertaining to safety or environmental compliance;
 - c. A determination that any representation, statement or warranty made by Contractor in this Contract, Release or any other statement, report or document which Contractor is required to furnish to Company, was false or misleading in any material respect;
 - d. The occurrence of any of the following: (i) the filing by or against Contractor of a proceeding under any bankruptcy or similar law, unless such proceeding is dismissed within thirty (30) calendar days from the date of filing; (ii) the making by Contractor of any assignment for the benefit of creditors; (iii) the filing by or against Contractor for a proceeding for dissolution or liquidation, unless such proceeding is dismissed within thirty (30) calendar days from the date of filing; (iv) the appointment of or the application for the appointment of a receiver, trustee or custodian for any material part of Contractor's assets unless such appointment is revoked or dismissed within thirty (30) calendar days from the date thereof; (v) the attempt by Contractor to make any adjustment, settlement or extension of its debts with its creditors generally; (vi) the insolvency of Contractor; or (vii) the filing or recording of a notice of lien or the issuance or the obtaining of a levy of execution upon or against a material portion of Contractor's assets, unless such lien or levy of execution is dissolved within thirty (30) calendar days from the date thereof;
 - e. A Material Adverse Change has occurred with respect to Contractor and Contractor fails to provide such performance assurances as are reasonable requested by Company, including without limitation the posting of additional Default Security pursuant to ARTICLE 11, DEFAULT SECURITY.
 - f. The Substantial Completion Date has not occurred on or before the date that is thirty (30) calendar days after the Substantial Completion Guaranteed Date;
 - g. Failure to develop a reasonably acceptable Schedule Recovery Plan pursuant to ARTICLE 56, SCHEDULE;
 - h. Following approval of a Schedule Recovery Plan pursuant to ARTICLE 56, SCHEDULE Contractor's unexcused failure to comply with the schedule set forth in the Schedule Recovery Plan (as determined from the revised Critical Path Schedule established by the Schedule Recovery Plan); or
 - i. Contractor suspends or abandons the Work.
2. Upon the occurrence of a breach or material default specified in this Article, Company shall have the right to terminate this Contract for cause.
3. Upon the occurrence of any such material default, following the applicable process described in this Article, Company shall be entitled upon Notice to Contractor and without notice to Contractor's sureties and without limiting any of Company's other rights or remedies, to terminate this Contract or to terminate Contractor's right to proceed with that portion of the Work affected by any such material default and collect the Net Replacement Costs incurred to complete the Work.
4. Upon termination of this Contract or any portion of this Contract upon a material default by Contractor, Company shall be entitled to pursue any and all rights and remedies that it may have against Contractor under this Contract or at law or in equity.

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5. Upon receipt of any such Notice of termination of the entire Contract or of any right to proceed with any portion of the Work following the applicable process described in this Article, Contractor shall, at its expense, for that portion of the Work affected by any such termination:
 - a. Assist Company in making an inventory of all Contractor-Furnished Materials and Company-Furnished Materials in storage at Contractor's facility, en route to Contractor's facility, in storage or manufacture elsewhere, en route to Company and on order from the suppliers;
 - b. Assess the status of any Deliverables still due and preserve any Work performed; and
 - c. To the extent that they are assignable, assign to Company any and all subcontracts and equipment rental agreements as designated in writing by Company.
6. In the event of such termination, Company may, for the purpose of completing the Work or enforcing these provisions, take possession of all equipment, tools, appliances, documentation, software source media, flow charts, documents and other Deliverables at Company's Work Site belonging to or under the control of Contractor, and may use them or may finish the Work by whatever method it may deem expedient including: (i) Company may hire a replacement contractor or contractors to complete the remaining Work that Contractor was otherwise obligated to complete under the Contract using such form of agreement as Company may deem advisable; or (ii) Company may itself provide any labor or materials to complete the Work. Contractor shall cooperate with and assist Company in attempting to acquire from Contractor's Subcontractors the right to take possession of and use any and all proprietary materials in the event of such termination. All proprietary materials of Contractor or Subcontractors shall remain subject to the provisions herein, and Company shall not have any broader rights to use or disclose such proprietary materials as a result of such termination. Any software embodying any of Contractor's proprietary materials shall also be subject to the provisions herein. In the event of such a termination, Contractor shall not be entitled to receive any further payment until the Work is completed, and such amounts may be offset against Company's Net Replacement Costs.
7. All rights and remedies provided in this Article are cumulative, and are not exclusive of any other rights or remedies that may be available, whether provided by law, equity, statute, in any other agreement between the Parties or otherwise. Upon the occurrence of any such default, following the applicable process described in this Article, Company shall be entitled to pursue any and all other rights and remedies, including without limitation damages, that Company may have against Contractor under this Contract or at law or in equity (provided, however that Company shall not be entitled to collect any damages at law attributable to late delivery, performance or any other item for which this Contract specifically provides liquidated damages as an exclusive remedy).

ARTICLE 56. SCHEDULE

For Releases issued in accordance with this Contract for which completion of the Work shall require thirty (30) calendar days, or more, the Contractor shall submit, within seven (7) business days after the Release effective date and prior to the start of the Work, a detailed bar chart type schedule for this Work. Contractor agrees to provide whatever management, administration, and control of its own Work or the Work of its Subcontractor of any tier which may be required to insure completion of the Work in accordance with this schedule.

Contractor shall perform and complete each segment of the Work in accordance with the schedule, unless otherwise approved in writing by an authorized representative of the Company.

Contractor shall commence performance of the applicable Work upon execution by Company and Contractor of a Release to be issued under the Contract. Each Release will include Project Guaranteed Dates. Contractor shall perform the Work under each Release in accordance with the Project Guaranteed Dates. Time is of the essence with respect to the performance by Contractor of its obligations hereunder.

Unless otherwise excused by the terms of this Contract, Contractor's failure to timely complete Work in accordance with the Project Guaranteed Dates set forth in the applicable Release shall result in the assessment of liquidated damages as set forth in ARTICLE 50, LIQUIDATED DAMAGES and at the rates and subject to the maximum liability caps set forth in the applicable Release. In addition, Contractor's failure to timely complete Work in accordance with the Project Guaranteed Dates may constitute, as provided in ARTICLE 55, TERMINATION FOR CAUSE, a Contractor event of default.

Contractor shall develop (before or after the execution of a Release) and thereafter maintain and manage a comprehensive Critical Path Schedule for Contractor's performance of the Work, which Critical Path Schedule shall meet the minimum requirements of Exhibit U and be approved by Company. Utilizing the critical path method, Contractor shall continually be

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aware of factors that are delaying or that could delay the timely achievement of the Project Guaranteed Dates, and shall take all remedial actions within its control to eliminate or minimize schedule delays, including overtime for the employees of Contractor and Subcontractors and the assignment of additional Personnel and/or other resources.

Except as specifically excused pursuant to the terms of this Contract, if: (i) Contractor fails to comply with the schedule for achieving Substantial Completion on or before the Substantial Completion Guaranteed Date, (ii) Contractor fails to timely complete a Contractor Critical Milestone, or (iii) Company has reasonable cause to believe that Contractor's ability to meet any of the critical path items on the Critical Path Schedule has been substantially impaired, then (in any of the above-referenced events) Contractor shall, within ten (10) calendar days after Contractor becomes aware of such delay, or within ten (10) calendar days after receiving written request from Company, submit for approval by Company, a written plan to complete all necessary Work to achieve Substantial Completion by the Substantial Completion Guaranteed Date (the "Schedule Recovery Plan"). If Contractor does not believe it is reasonably possible to achieve Substantial Completion on or before the Substantial Completion Guaranteed Date, then the Schedule Recovery Plan must demonstrate how Contractor will complete all necessary Work to achieve Substantial Completion prior to the default deadline set forth in Section 55.1(f). Contractor's failure to demonstrate its ability to achieve Substantial Completion prior to the default deadline set forth in Section 54.1(f) shall constitute a Contractor Event of Default as set forth in Section 54.1(g). Within fifteen (15) calendar days after receipt of the Schedule Recovery Plan, Company shall deliver Notice of approval or disapproval of the Schedule Recovery Plan to Contractor, the approval thereof not to be unreasonably withheld. If Company disapproves all or any portion of the Schedule Recovery Plan, Company shall approve those portions of the Schedule Recovery Plan that are acceptable and provide comments to those portions of the Schedule Recovery Plan that have been disapproved. Contractor shall then resubmit a revised Schedule Recovery Plan addressing such comments as shall have been provided by Company within five (5) additional calendar days and, upon approval by Company, promptly proceed with such additional Work as may be required under the Schedule Recovery Plan. Contractor's failure to develop a reasonably acceptable Schedule Recovery Plan shall constitute a Contractor Event of Default as set forth in Section 54.1(g). Approval by Company of a Schedule Recovery Plan shall not be deemed in any way to have relieved Contractor of its obligations under the Contract including, without limitation, Contractor's obligations to comply with the Project Guaranteed Dates. Approval by Company of a Schedule Recovery Plan shall not be a basis for an increase in the Contract Price, or limit the rights of Company under ARTICLE 50, LIQUIDATED DAMAGES. Contractor's unexcused failure to comply with the revised Critical Path Schedule established by the Schedule Recovery Plan shall constitute a Contractor event of default as set forth in Section 54.1(h).

ARTICLE 57. DELAYS

Force Majeure. Neither Party shall be liable for delays caused by a Force Majeure Event; provided, however, that both Parties agree to seek to mitigate the potential impact of any such delay. Any delay attributable to a Force Majeure Event shall not be the basis for a request for additional compensation. In the event of any such delay, the required completion date may be extended for a reasonable period not exceeding the time actually lost by reason of the Force Majeure Event. The imposition of any liquidated damages, if applicable, for performance or completion of the Work under a specific Release shall be extended by an amount of time equivalent to the length of time of the Force Majeure Event.

Company-Caused Delay. If Contractor is actually delayed in its performance of the Work by the actions or omissions of Company (excluding Company's good faith exercise of rights and remedies provided under the Contract), or by changes ordered with respect to the Work, and if Contractor is able to prove that it has used all reasonable means to avoid or minimize the effects of the delay, then Contractor's guaranteed completion dates shall be equitably adjusted to reflect the impacts of such Company-caused delays. To the extent reasonably possible, Company may, at its discretion, and in lieu of granting an extension of time, require Contractor to regain the schedule whereby Company shall compensate Contractor for all additional costs reasonably incurred thereby. No adjustment under this Article shall be made for any delay to the extent that it is caused or contributed to by Contractor or performance would have otherwise been delayed by any other cause, including the fault or negligence of Contractor.

Contractor Caused Delays. . In the event the Work is not delivered in accordance with and within the time specified in the Release, and the failure to timely perform is in no way related to either a Force Majeure Event or Company-caused delay, Contractor shall pay liquidated damages as indicated in ARTICLE 50, LIQUIDATED DAMAGES.

Request for Time Extension. Any request for time extension or additional compensation shall be made in accordance with ARTICLE 52, CLAIM NOTICE AND RESOLUTION PROCEDURE.

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If, at any time, Company determines the progress of the Work is unsatisfactory, Contractor may be directed to work overtime, increase its workforce, work additional shifts, add supervision or take other corrective actions to ensure the timely and orderly prosecution of the Work, at no additional cost to Company.

ARTICLE 58. SCHEDULED OUTAGES

Contractor shall coordinate with Company to schedule outages required for the completion of the Work. Company will exert every reasonable effort to secure required outages during Contractor's normal work week schedule. Requests for outages shall be given to Company with the greatest lead time possible, but not less than seventy-two (72) hours.

Contractor shall be aware that Company may not be able to guarantee the scheduled outages or duration of outages due to unforeseen circumstances, severe weather, or system requirements.

Contractor shall plan its Work activities to keep each outage time to a minimum. Contractor shall perform as much preliminary Work as possible before scheduling each outage.

ARTICLE 59. SITE INVESTIGATION

With respect to each project, Contractor will satisfy itself as to the nature and location of the Work, the general, local, physical and other conditions of the Work, particularly those bearing upon transportation, access, disposal, handling and storage of materials, availability and quality of labor, water, electric power, roads, uncertainties of weather, including flash floods or similar physical conditions at the Work Site, the character of conditions on the ground, the character, quality and quantity of surface and subsurface material to be encountered; the character of equipment and facilities needed preliminary to and during the prosecution of the Work, and all other matters which could in any way affect the Work or the cost thereof under this Contract. The failure of Contractor to, prior to the effective date of any Release, adequately investigate and acquaint itself with the available information concerning these conditions and all other matters which could in any way affect the Work or the cost thereof under this Contract shall not relieve Contractor from its responsibility for properly estimating the difficulties and costs of successfully performing the Work and completing the Work as specified in a Release under this Contract, and shall not be grounds for adjusting either the price or the schedule. Company assumes no responsibility for any understanding or representation made by any of its officers or agents during or prior to the negotiations and execution of this Contract or any Release.

ARTICLE 60. CHANGED CONDITIONS

Contractor shall immediately and before such physical conditions are disturbed, provide Notice to Company of: (i) subsurface or latent physical conditions at any Work Site differing materially from those indicated in this Contract and the applicable Release and which could not have been discovered pursuant to the site investigations for which Contractor is responsible under ARTICLE 59, SITE INVESTIGATION; or (ii) unknown physical conditions at the Work Site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Contract and the applicable Release and which could not have been discovered pursuant to the site investigations for which Contractor is responsible under ARTICLE 59, SITE INVESTIGATION. Company will promptly investigate the conditions, and if it finds that such conditions do materially differ and cause an increase or decrease in the cost of, or the time required for performance of this Contract, an equitable adjustment shall be made and this Contract modified in writing accordingly. Any claim by Contractor for adjustment hereunder shall be made pursuant to ARTICLE 52, CLAIM NOTICE AND RESOLUTION PROCEDURE.

ARTICLE 61. CYBER SECURITY

I. OBJECTIVE AND SCOPE OF THIS ARTICLE

Managing supply chain cyber security risk requires Company's contractors and suppliers to meet minimum obligations to maintain the integrity of Company's systems, facilities, and Confidential Information. This Cyber Security Article ("Article") applies to any contractor or supplier (collectively, "Contractor" for purposes of this Article) (and its Personnel and Subcontractors) that may store, process, or have access to Company's information systems, networks, services, or applications, and may impact the integrity, availability, or confidentiality of Company's Confidential Information or systems for the term of the Contract.

II. DEFINED TERMS

"Confidential Information" shall have the meaning as defined in the Contract and in addition include any information that identifies an individual or customer of Company, including but not limited to customer account numbers, customer addresses,

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customer energy usage information, credit or bank account numbers, social security numbers, passport or driver's license numbers, or any information not otherwise classified as public information by Company.

"Data" shall mean any information, formulae, algorithms, or other content that the Company or the Company's employees, agents and end users upload, create or modify using any software provided pursuant to the Contract. Data also includes user identification information and metadata which may contain Data or from which the Company's Data may be ascertainable.

"Security Breach" shall mean any act or omission that compromises either the security, confidentiality, or integrity of Company's Confidential Information, Data, systems and facilities or Company's physical, technical, administrative or organizational safeguards and controls relating to the protection of Company's Confidential Information, Data, systems, and facilities.

Any capitalized terms not otherwise defined herein shall have the meaning in the Contract.

III. COMPLIANCE WITH INDUSTRY BEST PRACTICES AND STANDARDS

Without limiting Contractor's obligations elsewhere in this Article or the Contract, Contractor shall implement baseline security safeguards and controls to protect Company's Confidential Information, Data, and systems that are no less rigorous than accepted industry practices, specifically those set forth in the latest published version of (i) National Institute of Standards and Technology Special Publication 800-53, Recommended Security Controls for Federal Information Systems or (ii) ISO 27001-Information Security Management.

IV. INFORMATION AND SYSTEMS SECURITY PROGRAM

(a) Confidential Information. Contractor represents and warrants that its collection, access, use, storage, disposal, and disclosure of Company's Confidential Information and Data does and will comply with all applicable federal and state privacy and data protection laws, regulations, and directives. Contractor's safeguards shall include limiting access to Company systems and Confidential Information to Contractor's Personnel who have a "need to know" or otherwise access Company's systems and Confidential Information to enable Contractor to perform Work or Services under the Contract. Articles of the Contract, concerning (i) Contractor's Personnel and their access to Company's facilities and (ii) the handling of Confidential Information, respectively, shall apply to this Article as applicable. These provisions included herein apply to all Subcontractors to the extent and during such periods as they are in possession of Confidential Information or Data.

(b) Data and Information Security Program. Contractor shall develop a data and information security program that documents the policies, standards, and controls in use, including organizational, administrative, technical, and physical safeguards and standards. The data and information security program must be reasonably designed to achieve the objectives to:

- (i) ensure the confidentiality, availability, and integrity of Company's Confidential Information;
- (ii) protect against any anticipated threats or hazards to the confidentiality, availability, or integrity of such information; and
- (iii) protect against unauthorized access to or use of such information or information systems.

Contractor shall ensure that it produces and communicates a comprehensive, documented data and information security program to all Personnel with access to Company's Confidential Information, Data, and systems.

(c) Information Systems Acquisition, Development and Maintenance. Contractor shall utilize a comprehensive application security program to help ensure that applications are consistent with industry security requirements. This shall include full application compliance testing and software development reviews.

(d) Vulnerability Testing and Remediation. Contractor shall ensure systems are regularly scanned for compliance with industry security standards, and that any applicable detected vulnerabilities are remediated. Contractor shall ensure that application security vulnerabilities are assessed for business risk and impact, and have a vulnerability remediation plan.

(e) Secure System Configuration. Contractor shall establish, implement, and actively manage (track, report on, and correct) the security configuration of laptops, servers, and workstations using a rigorous configuration management and change control process in order to prevent attackers from exploiting vulnerable services and settings.

(f) System Patching. Contractor shall implement an effective software update management process to ensure the most relevant, up-to-date, approved patches are installed for all authorized software. This process shall also include weighing the benefit associated with installing a patch to resolve a vulnerability against other factors, including the potential impact to

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system stability.

(g) Security Review of Internal and External Applications. Contractor shall perform security reviews of applications developed internally, as well as third party applications that process, store or transmit data.

(h) Application Security Awareness Program Content. Contractor shall ensure that the content of its application security awareness program incorporates current and relevant security attacks and vulnerabilities mitigation.

(i) Disaster Recovery and Business Continuity. Contractor shall develop a comprehensive IT disaster recovery and business continuity program and plan that is accessible by Company, supported by contingency arrangements, and tested periodically.

(j) Remote Access. Contractor shall follow all applicable Company requirements for all remote access to Company resources and systems. To the extent Contractor's Personnel will have interactive remote access to Company's networks, systems or applications, such access must be performed on a secure connection. Contractor shall utilize multi-factor authentication (e.g., two-factor or token) to provide an additional level of security for Contractor's Personnel with such access. Contractor shall maintain an accurate record of Personnel or Subcontractors who will have remote access to Company resources and systems, and the country of origin of individual remote access, and Contractor shall name its personnel and Subcontractors given remote access to Company's systems. Company reserves the right to deny individual remote access connection at Company's sole discretion.

V. SECURITY OF CONFIDENTIAL INFORMATION AND DATA

(a) Any Confidential Information and Data provided by Company to Contractor (electronically or otherwise) and used by the Contractor directly or indirectly in the performance of this Contract shall remain at all times the confidential property of Company. Contractor shall not use Confidential Information or Data, and shall not permit any Subcontractor to use Confidential Information or Data, for any purpose other than the purpose of performing the Work or Services set forth in this Contract.

(b) During the term of the Contract, Contractor shall provide Company with Notice if Confidential Information or Data will be physically located outside the United States at least forty-eight (48) hours in advance.

(c) Contractor shall be responsible for preserving the integrity (i.e., completeness and accuracy) of, and preventing any unauthorized access, corruption, loss, damage and/or destruction to, Confidential Information or Data.

VI. OVERSIGHT OF COMPLIANCE

Company reserves the right to conduct an assessment, audit, examination, or review of Contractor's security controls to confirm Contractor's adherence to the terms of this Article, as well as any applicable laws, regulations, and industry standards, not more than once per year or upon notification of any Security Breach or complaint regarding Contractor's privacy and security practices. Company may elect to obtain the services of a third party to conduct this assessment, audit, examination, or review on behalf of Company. Company shall give Contractor no less than thirty (30) calendar days' notice of its intent to conduct such assessment, audit, examination, or review. As part of this assessment, audit, examination, or review, Company may review all controls in Contractor's physical and/or technical environment in relation to all Confidential Information being handled and/or services being provided pursuant to this Article. Contractor shall fully cooperate with such assessment by providing access to knowledgeable personnel, physical premises, documentation, infrastructure, and application software that processes, stores, or accesses Company's Confidential Information or systems pursuant to the Contract. Vendor grants the Company the right to perform network-based vulnerability scans of any Internet-reachable websites or devices used for the provision of services or support under the Contract.

VII. SECURITY BREACH PROCEDURES; EQUITABLE RELIEF

(a) Contractor shall:

(i) provide Company with the name and contact information for any Personnel who shall serve as Contractor's primary security contact and shall be available to assist Company twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a real or emerging Security Breach;

(ii) notify Company of a real or emerging Security Breach as soon as practicable, but no later than 24 hours after Contractor becomes aware of it; and

(iii) notify Company of any real or emerging Security Breach by telephone at the following number: (503) 813-5555.

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(b) Immediately following Contractor's notification to Company of a real or emerging Security Breach, the Parties shall coordinate with each other to investigate such Security Breach. Contractor agrees to fully and promptly coordinate with Company in Company's handling of the matter, including, without limitation: (i) assisting with any investigation; (ii) providing Company with physical access to the facilities and operations affected; (iii) facilitating interviews with Contractor's Personnel and other employees or agents involved in the matter; and (iv) making available all relevant records and other materials required to comply with applicable law, regulation, industry standards, or otherwise reasonably required by Company.

(c) Contractor shall use best efforts to immediately remedy any real or emerging Security Breach and prevent any further Security Breach at Contractor's expense in accordance with applicable privacy laws, regulations, and standards. Contractor shall reimburse Company for actual reasonable costs incurred by Company in responding to, and mitigating damages caused by, any real or emerging Security Breach, including all costs of notice and/or remediation pursuant to this section. In the event of a Security Breach, Contractor shall promptly use its best efforts to prevent a recurrence of any such Security Breach.

(d) Contractor agrees that it shall not inform any third party of any Security Breach without first obtaining Company's prior written consent other than to inform a complainant that the matter has been forwarded to Company's legal counsel. Further, Company shall have the sole and exclusive right to determine: (i) whether notice of the Security Breach is to be provided to any individuals, regulators, law enforcement agencies, consumer reporting agencies, or others as required by law or regulation, or otherwise in Company's discretion; and (ii) the contents of such notice.

(e) Contractor shall fully cooperate at its own expense with Company in any litigation or other formal action deemed reasonably necessary by Company to protect its rights relating to the use, disclosure, protection, and maintenance of its Confidential Information and Data.

(f) Contractor shall follow the same notice procedures above as applicable if it becomes aware of any significant emerging cyber security issues involving any Subcontractors that may result in a Security Breach involving the Company.

(g) Contractor acknowledges that any breach of Contractor's obligations set forth in this Article may cause Company substantial irreparable harm for which monetary damages would not be adequate compensation and agrees that, in the event of such a breach or threatened breach, Company is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which Company may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other available remedies at law or in equity, subject to any express exclusions or limitations in the Contract to the contrary.

VIII. MATERIAL BREACH OF CONTRACT

Contractor's failure to comply with any of the provisions in this Article is a material breach of the Contract; in such an instance Company may terminate the Contract for cause in a manner consistent with this Contract. In such an event, Company may terminate the Contract effective immediately upon written Notice to the Contractor without further liability or obligation to Contractor notwithstanding any provision to the contrary in the Contract.

IX. NETWORK SECURITY & PRIVACY LIABILITY

If the Work or Services under the Contract involves the rendering of IT services including, but not limited to: software, software or hardware or systems development or consulting services; internet/application services (e.g., web hosting); providing content; connections to systems, technology or network(s); or if Contractor in any way collects, obtains, maintains or in any way accesses or uses Confidential Information or Data, then Contractor, and its Subcontractors, shall maintain Network Security & Privacy Liability coverage, which can be included via evidenced endorsement to Professional Errors & Omissions coverage, throughout the term of this Contract and for a period of two (2) years thereafter, with a minimum required limit of \$5,000,000 Each Claim.

X. CYBER INDEMNIFICATION

To the fullest extent permitted by the law, Contractor shall defend, indemnify, and hold harmless Company and Company's affiliates, respective officers, directors, employees, agents, and successors (each an "Indemnitee") from and against all losses, damages, liabilities, actions, judgments, interest, awards, penalties, fines, costs or expenses, including reasonable attorneys' fees, arising out of or resulting from any third-party claim against any Indemnitee arising out of or resulting from Contractor's action or omission that represents a failure to comply with any of its obligations under this Article

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ARTICLE 62. USE OF PORTIONS OF THE WORK

Company may take possession of and use any portion of the Work performed by Contractor. Such action by Company shall not be construed as constituting final acceptance and shall neither relieve Contractor of any of its responsibilities under this Contract, nor act as a waiver by Company of any of the conditions hereof, provided that Contractor shall not be liable for the cost of repairs or any rework made necessary as a result of such use. If such action increases the cost or delays the completion of remaining portions of Work, Contractor shall be entitled to such extra compensation or extension of time, or both, as Company may determine to be proper.

ARTICLE 63. HISTORICAL ARTIFACTS

In the event that any Native American relics or items with archaeological or historical value are discovered by Contractor or any of its Subcontractors of any tier or any of their representatives or employees, Contractor shall leave said items undisturbed and shall immediately notify Company and await its direction before proceeding with any Work in the vicinity. Under no circumstances will Contractor take possession of any item discovered.

ARTICLE 64. COMPLIANCE WITH LAWS

Contractor shall at all times comply with all laws, statutes, regulations, rules, executive orders, ordinances, codes, and standards applicable to Contractor's performance of the Work including, without limitation, those governing health and safety, wages, hours, employment of minors, desegregation and employment discrimination, as each may be applicable to the Work performed hereunder, and based on total anticipated dollar value of this Contract. Contractor further confirms that its employees and the employees of all Subcontractors employed under the Contract may legally work in the United States.

Without limiting the generality of the foregoing, Contractor and any Subcontractors shall abide by the requirements of 41 CFR §§60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity national origin or discussion of compensation. Moreover, these regulations require that covered prime contractors and Subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. Contractor and any Subcontractors shall also abide by the requirements of Executive Order 11246, as amended, to develop and maintain a written affirmative action program (AAP) and Executive Orders 11625 and 13170 (utilization of disadvantaged business enterprises) and the Small Business Act. To the extent applicable, the employee notice requirements set forth in 29 CFR Part 471, Appendix A to Subpart A, are hereby incorporated by reference into this Contract.

Contractor shall indemnify, defend and hold harmless Company, its directors, officers, employees and agents from all losses, costs and damages by reason of any violation thereof and from any liability, including without limitation fines, penalties and other costs arising out of Contractor's failure to so comply.

ARTICLE 65. INDEPENDENT CONTRACTOR

Contractor is an independent contractor and all persons employed by Contractor in connection herewith shall be employees of Contractor and not employees of Company in any respect. Contractor shall maintain complete control over Contractor Personnel.

ARTICLE 66. RELEASE OF INFORMATION – ADVERTISING AND PROMOTION

Contractor shall not publish, release, disclose or announce to any member of the public, press, official body or any other third party any information concerning this Contract and/or the Work, or any part thereof, without the express prior written consent of Company, except as required by law. Neither the names of Company, nor the Work Site shall be used in any advertising or other promotional context by Contractor without the express prior written consent of Company.

ARTICLE 67. CONFIDENTIAL INFORMATION; NONDISCLOSURE

Definition of Confidential Information. The term "Confidential Information" means: (i) proprietary information of Company; (ii) information marked or designated by Company as confidential; (iii) BES Cyber System Information of Company; (iv) information, whether or not in written form and whether or not designated as confidential, which is known to Contractor as being treated by Company as confidential; (v) information provided to Company by third parties which Company is obligated to keep confidential (including but not limited to information relating to an identified or identifiable natural person, whether or

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not such information is publicly available); and (vi) information developed by Contractor in connection with the performance of this Contract.

BES Cyber System Information. Confidential Information of Company labeled as BCSI shall be protected consistent with the following requirements: (a) BCSI shall be protected at all times, either by appropriate storage or having it under the personal observation and control of a person authorized to receive it; (b) each person who works with protected BCSI is personally responsible for taking proper precautions to ensure that unauthorized persons do not gain access to it; (c) reasonable steps shall be taken to minimize the risks of access to BCSI by unauthorized personnel (when not in use, BCSI shall be secured in a secure container, such as a locked desk, file cabinet or facility where security is provided); (d) documents or material containing BCSI may be reproduced to the minimum extent necessary, consistent with the need to carry out the Work, provided that the reproduced material is marked and protected in the same manner as the original material; (e) material containing BCSI should be disposed of through secured shredding receptacles or other secured document destruction methods; (f) BCSI shall be transmitted only by the following means: (i) hand delivery; (ii) United States first class, express, certified or registered mail, bonded courier, or through secure electronic means; (iii) e-mail with encrypted file (such as, WinZip with password) (the password should not be included in e-mail, but should be delivered by phone or in an unrelated e-mail not mentioning the document name; password-protected Microsoft Office documents do not meet the encryption requirements); and (g) documents or material containing BCSI shall be returned to Company or certified destroyed upon completion of the Work.

Nondisclosure. Contractor agrees that it will not disclose Confidential Information, directly or indirectly, under any circumstances or by any means, to any third person without the express written consent of Company.

Nonuse. Contractor further agrees that it will not use Confidential Information except as may be necessary to perform the Work called for by this Contract.

Protection. Confidential Information will be made available by Contractor to its employees only on a "need to know" basis and only after notifying such employees of the confidential nature of the information and after having obligated them to the nonuse and nondisclosure obligations of this Contract. Contractor agrees to take all reasonable precautions to protect the confidentiality of Confidential Information and, upon request by Company, to return to Company any documents which contain or reflect such Confidential Information.

Federal Defend Trade Secrets Act. The Federal Defend Trade Secrets Act of 2016 provides immunity from civil or criminal liability for any employee or contractor who discloses a trade secret "in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney" where the disclosure by the employee or contractor is "solely for the purpose of reporting or investigating a suspected violation of law" or "is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal." 18 U.S.C. § 1833(b). Nothing in this Contract is intended to conflict with 18 U.S.C. § 1833(b) or create liability for disclosures of trade secrets that are expressly allowed by 18 U.S.C. § 1833(b).

Unless waived by Company, Contractor shall require its employees and Subcontractors of any tier to adhere to these confidential information and nondisclosure terms.

ARTICLE 68. OWNERSHIP OF DESIGNS, DRAWINGS, AND WORK PRODUCT

All materials prepared or developed hereunder by Contractor or its employees, or Subcontractors or their employees or agents, including documents, calculations, maps, sketches, designs, tracings, notes, reports, data, computer programs, models and samples, shall become the property of Company when prepared, whether delivered to Company or not, and shall, together with any materials furnished Contractor and its employees by Company hereunder, be delivered to Company upon request, and, in any event, no later than 30 days upon termination or final acceptance of the Work. Contractor agrees that all Work prepared by it, or its employees, agents or Subcontractors of any tier, or their employees, under this Contract which is subject to protection under copyright laws constitutes "work made for hire," all copyrights to which belong to Company. In any event, Contractor assigns to Company all intellectual property rights in such Work whether by way of copyright, trade secret or otherwise, and whether or not subject to protection by copyright laws. Contractor shall retain all rights to its preexisting standard details, specifications, computer software or other intellectual property. Such preexisting materials are hereby licensed to Company, through a fully paid perpetual license, for Company's own use for the Work that is the subject of this Contract to the fullest extent necessary to accomplish the purposes of this Contract any future use, maintenance or repair of the Work.

ARTICLE 69. AS-BUILT DRAWINGS

Contractor shall maintain a set of Contract drawings at the Work Site, with all changes or deviations from the original drawings neatly marked hereon in a contrasting color, as well as prints of working drawings prepared by Contractor. This shall

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be a separate set of drawings, not used for construction purposes, which shall be kept up-to-date daily as the job progresses and shall be made available for inspection by Company at all times. This set of "as-builts" shall be delivered to Company no later than 30 days at or prior to final completion.

ARTICLE 70. PATENT AND COPYRIGHT INDEMNITY

Contractor shall indemnify, defend, and hold harmless Company, its directors, officers, employees, and agents against and from all claims, losses, costs, suits, judgments, damages, and expenses, including attorneys' fees, of any kind or nature whatsoever on account of infringement of any patent, copyrighted or uncopyrighted work, including claims thereof pertaining to or arising from Contractor's performance under this Contract. If notified promptly in writing and given authority, information and assistance, and contingent upon Company not taking any position adverse to Contractor in connection with such claim, Contractor shall defend, or may settle at its expense, any suit or proceeding against Company so far as based on a claimed infringement which would result in a breach of this warranty and Contractor shall pay all damages and costs awarded therein against Company due to such breach.

In case any Contractor-Furnished Materials, products, services or combination thereof are in such suit held to constitute such an infringement and the use of said Contractor-Furnished Materials, products or services is enjoined, Contractor shall, at its expense and through mutual agreement between Company and Contractor, either procure for Company the right to continue using said Contractor-Furnished Materials, products or services or replace same with non-infringing Contractor-Furnished Materials, products or services.

ARTICLE 71. NONEXCLUSIVE RIGHTS

Nothing in this Contract is to be construed as granting to Contractor an exclusive right to provide any or all of the Work anticipated herein. The use of Contractor's services is completely discretionary with Company. This Contract shall not be construed in any way to impose a duty upon Company to use Contractor.

ARTICLE 72. ESTIMATED REQUIREMENTS

This Contract is not a commitment for a specific quantity of Work to be performed during a given period of time, or in any given geographical area. There shall be no commitment by Company to Contractor of either a specific quantity of Work to be performed, or of financial expectations to be realized under this Contract.

ARTICLE 73. ASSIGNMENT

Contractor shall not assign this Contract or any part hereof, or any rights or responsibilities hereunder without the prior written consent of Company, and any attempted assignment in violation hereof shall be void.

ARTICLE 74. SUBCONTRACTS

Contractor shall not subcontract any or all of the Work without prior written consent of Company which shall not be unreasonably withheld. Contractor shall be fully responsible for the acts or omissions of any Subcontractors of any tier and of all persons employed by them, shall maintain complete control over all such Subcontractors, and neither the consent by Company, nor anything contained herein, shall be deemed to create any contractual relation between the Subcontractor of any tier and Company.

ARTICLE 75. NONWAIVER

The failure of Company to insist upon or enforce strict performance by Contractor of any of the terms of this Contract, or to exercise any rights herein shall not be construed as a waiver or relinquishment to any extent of Company's right to enforce such terms or rights on any future occasion.

ARTICLE 76. SEVERABILITY

Any provision of this Contract prohibited or rendered unenforceable by operation of law shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Contract.

ARTICLE 77. APPLICABLE LAW AND VENUE

This Contract shall be interpreted in accordance with the substantive and procedural laws of the state in which the project Work Site is located (or, for Releases providing construction extending across state lines, the state in which the majority of the Work Site is located), as designated in the applicable Release for such project. Any litigation between the Parties arising out of or relating to this Contract will be conducted exclusively in appropriate federal or state courts of such state, and Contractor consents

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to jurisdiction by such courts. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS CONTRACT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

FOR WORK PERFORMED IN CALIFORNIA, THE FOLLOWING JURY TRIAL WAIVER AND ARBITRATION PROVISION APPLIES. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS CONTRACT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. IF A WAIVER OF JURY TRIAL IS DEEMED BY ANY COURT OF COMPETENT JURISDICTION TO NOT BE ENFORCEABLE FOR ANY REASON, THEN TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO AGREE TO BINDING ARBITRATION. SUCH ARBITRATION SHALL BE IN ACCORDANCE WITH THE RULES AND PROCEDURES OF THE AMERICAN ARBITRATION ASSOCIATION (AAA). NOTWITHSTANDING ANY AAA RULES AND PROCEDURES, OR ANY OTHER PROVISION OF ANY STATE OR FEDERAL LAWS, THE PARTIES AGREE THAT THE ARBITRATORS SHALL NOT CONSIDER OR AWARD PUNITIVE DAMAGES AS A REMEDY. UPON THE COMPANY'S REQUEST, AAA SHALL PROVIDE THE PARTIES A LIST OF ARBITRATORS EACH OF WHOM HAVE EXPERIENCE AND EXPERTISE APPLICABLE TO THE WORK. UPON EACH OF THE PARTIES' RECEIPT OF SUCH LISTS, EACH PARTY SHALL HAVE TEN (10) DAYS TO SELECT AN ARBITRATOR. THE TWO SELECTED ARBITRATORS SHALL THEN SELECT A THIRD ARBITRATOR WITHIN THIRTY (30) DAYS FROM THE DATE THE INITIAL TWO ARBITRATORS WERE SELECTED AND THE MATTER SUBJECT TO ARBITRATION SHALL BE ARBITRATED AND A DECISION OF THE ARBITRATORS ISSUED WITHIN SIXTY (60) DAYS AFTER THE SELECTION OF THE THIRD ARBITRATOR.

ARTICLE 78. BUY AMERICA CLAUSE

To the extent that a Release or the Scope of Work for a Release indicates that the Contractor-Furnished Materials must meet "Buy America" requirements, then Contractor shall be responsible for ensuring that applicable Contractor-Furnished Materials comply with 23 USC §313 and/or 23 CFR 635.410. Without limiting the foregoing, Contractor shall furnish a signed certification (the "Buy America Certification") in conjunction with the below-specified Contractor-Furnished Materials. The Buy America Certification shall be in the format of, and according to the specific instructions set forth in, the attached Exhibit P. Such obligation shall include, without limitation, providing all supplemental and supporting documentation identified in the instructions to the Buy America Certification. A Buy America Certification is required only for the following specific items of Contractor-Furnished Materials (as applicable to the Release): (i) steel transmission or distribution pole structures (exclusive of any cross arms, guy wires and anchors, transformers, insulators, cutouts, surge arrestors, switches, hardware, fasteners, brackets, base plate, conductor or other separately-provided attachments to be ordered separately and thereafter affixed to the poles structures); (ii) steel or iron conduit and risers; (iii) steel rebar to be furnished in conjunction with: concrete foundations, concrete transmission or distribution pole structures, or any pre-fabricated concrete vaults or similar concrete structures; (iv) grates and covers for utility vaults and similar structures; and (v) steel culverts. Electronic copies of all required Buy America Certifications shall be emailed to BuyAmericaCert@pacificorp.com prior to installation of the Contractor-Furnished Materials. Hard copies of all required Buy America Certifications shall be delivered in accordance with the instructions specified in the applicable Release or Scope of Work. Contractor's performance in accordance with the requirements and timetables set forth above is a condition precedent to the payment for the Contractor-Furnished Materials identified above. Contractor shall itemize in writing any project pricing impacts incurred with respect to the Release as a result of Contractor's compliance with this Article.

ARTICLE 79. ENTIRE CONTRACT; DOCUMENTS INCORPORATED BY REFERENCE

This Contract, including any referenced exhibits and attachments, and the Release constitute the complete agreement between the Parties with respect to any transaction. All understandings, representations, warranties and agreements, if any, existing between the Parties regarding the subject matter hereof are merged into and superseded by this Contract, which fully and completely expresses the agreement of the Parties with respect to the subject matter hereof. Any Scope of Work, specifications, drawings, schedules or other documents listed in this Contract are incorporated by reference into this Contract. In the event of a conflict between any Scope of Work, specifications, drawings, schedules or other attachment or exhibit to this Contract and the above terms and conditions of this Contract, the above terms and conditions of this Contract shall take

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precedence and control. In the event of a conflict between the terms and conditions of this Contract and the terms and conditions of any Release, the terms of the Release shall take precedence and control.

Company assumes no responsibility for any understanding or representation made by any of its employees, officers or agents during or prior to the negotiations and execution of this Contract, unless such understanding or representation is expressly stated in the Contract.

ARTICLE 80. EXECUTION AND EFFECTIVE DATE

This Contract has been executed by duly authorized representatives of the Parties and shall be effective as of date of execution by Company.

CONTRACTOR:

By: _____

(Signature)

Name: _____

(Type or Print)

Title: _____

(Date Executed)

**COMPANY:
PacifiCorp**

By: _____

(Signature)

Name: _____

(Type or Print)

Title: _____

(Date Executed)